

**AMENDED**

**AGENDA**

**GALLUP CITY COUNCIL  
TUESDAY, JANUARY 26, 2016  
SPECIAL MEETING – 4:30 P.M.  
REGULAR MEETING – 6:00 P.M.  
CITY COUNCIL CHAMBERS**

Jackie McKinney, Mayor

Linda Garcia  
Councilor, District #1

Allan Landavazo  
Councilor, District #2

Yogash Kumar  
Councilor, District #3

Fran Palochak  
Councilor, District #4

Maryann Ustick, City Manager  
George Kozeliski, City Attorney

**SPECIAL MEETING – 4:30 P.M.**

**A. Roll Call**

**B. Work Session**

1. Growth Management Master Plan Update – Clyde (C.B.) Strain, Planning Director

**C. Recess Until 6:00 P.M.**

**REGULAR MEETING – 6:00 P.M.**

**A. Pledge of Allegiance**

**B. Roll Call**

**C. Approval of Minutes**

Special and Regular Meetings of January 12, 2016

## **AMENDED AGENDA**

Special & Regular City Council Meeting – 1/26/2016

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### **D. Discussion/Action Topics**

1. Ordinance No. S2016-1; An Ordinance Authorizing the Execution and Delivery of a Water Project Fund Loan/Grant Agreement By and Between the New Mexico Finance Authority and the City of Gallup – Vince Tovar, Director, Gallup Water and Sanitation Director
2. Approval to Convert Existing Part-Time Judicial Aide to Full-Time Status at Municipal Court – Kilo Abeita, Human Resources Director
3. Approval of Intergovernmental Project Participation Agreement and Security Agreement with the New Mexico Economic Development Department for El Morro Theater – Rick Snider, General Services Director
4. Resolution No. R2016-10; Authorizing the Investment Grade Energy Audit and Project Proposal Agreement Between Energy Control, Inc./Opterra Energy Services and the City of Gallup – Richard Matzke, Director, Gallup Electric Department
5. Fiscal Year 2016 Lodgers Tax Funding for Events – Patty Holland, Chief Financial Officer
6. Resolution No. R2016-9; 2<sup>nd</sup> Quarter Fiscal Year 2016 Budget Adjustments and Report of Actuals – Patty Holland, Chief Financial Officer

### **E. Comments by Public on Non-Agenda Items**

### **F. Comments by Mayor and City Councilors**

### **G. Comments by City Manager and City Attorney**

### **H. Motion to Adjourn**

*Auxiliary aides for the disabled are available upon request. Please contact Alfred Abeita, City Clerk, at 863-1254 at least one (1) week prior to the meeting or as soon as possible in advance of the meeting to make any necessary arrangements.*

*Pursuant to the "Open Meetings Act", NMSA 1978, Section 10-15-1 through 10-15-4 of the State of New Mexico, this Agenda was posted at a place freely accessible to the public 72 hours in advance of the scheduled meeting.*

## **Work Session Item 1**

Growth Management Master Plan Update

Clyde (C.B.) Strain, Planning Director



# CITY OF GALLUP

## GALLUP GROWTH MANAGEMENT MASTER PLAN UPDATE

Summary Presentation to Gallup City Council  
January 26, 2016 Workshop

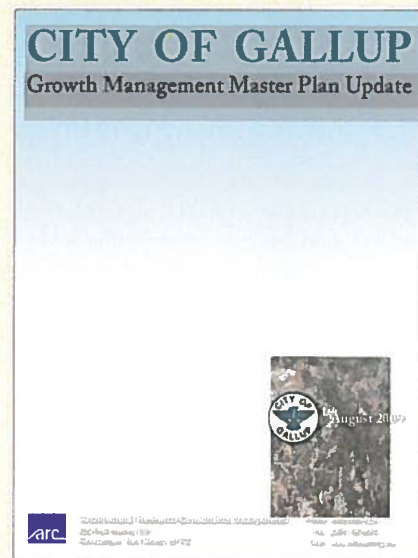
*Prepared by*



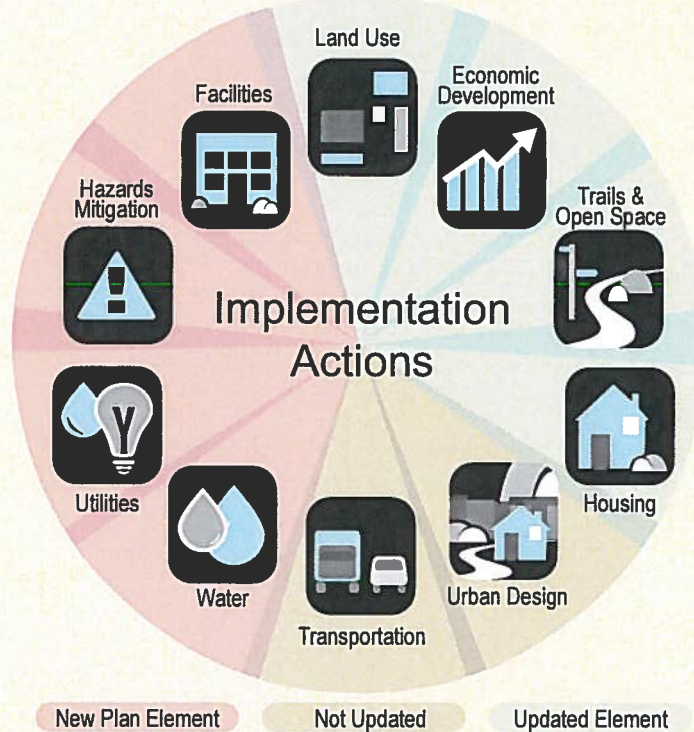
Architectural Research Consultants, Incorporated

## PLAN UPDATE

- The growth management master plan is an official public document adopted by the City Council as a policy guide to decisions about the physical development of the community. It presents in a general way how leaders of the government want the community to grow in the ensuing 20-30 years
- Current plan was adopted in 2009



# GROWTH MANAGEMENT MASTER PLAN: ELEMENTS



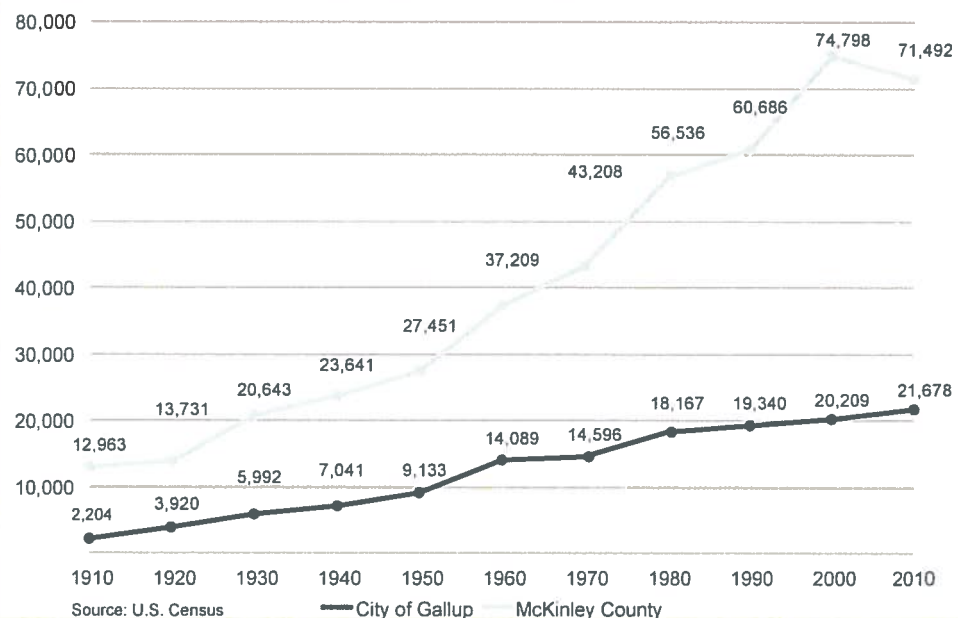
Gallup Growth Management Master Plan Update 2016 3

## Existing Conditions

# DEMOGRAPHIC TRENDS

- City grew every decade since 1910
- County population declined 3,400 between 2000 and 2010

McKinley County and City of Gallup Historic Population: 1910-2010



Gallup Growth Management Master Plan Update 2016 4



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## POPULATION DRIVERS: DEMOGRAPHICS

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- ↑ City of Gallup has grown each decade for 100 years, including adding nearly 1,500 persons 2000 to 2010
- ↑ U.S. Census Bureau estimates Gallup grew by ~600 persons 2010 to 2014
- ↑ Increase of Native American population shows in-migration particularly from Navajo Nation
- ↓ Births and birth rates have declined gradually in Gallup area and more sharply in McKinley County since 1990
- ↑ Gallup had a comparatively young population in 2010, with median age of 31.9 years compared to 36.7 years for NM

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Gallup Growth Management Master Plan Update 2016

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## POPULATION DRIVERS: ECONOMICS

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- ↓ County employment has declined since 2008
- ↑ Some major employers added jobs in recent years - GIMC, El Segundo and Lea Ranch mines, and Fire Rock Casino
- ↓ Others lost jobs - Wal-Mart, RMCH, City, County, and P&M Coal
- ↑ Gallup is employment hub of county, strong in “3 T’s” travel, trade and tourism - retail, medical services, lodging (new hotels, restaurants and Indian jewelry
- ↑ Gallup had substantial new building in 1990s and much of 2000s; residential permits have not recovered since 2009; additional phases of existing subdivisions can build and proposed residential projects may develop

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Gallup Growth Management Master Plan Update 2016

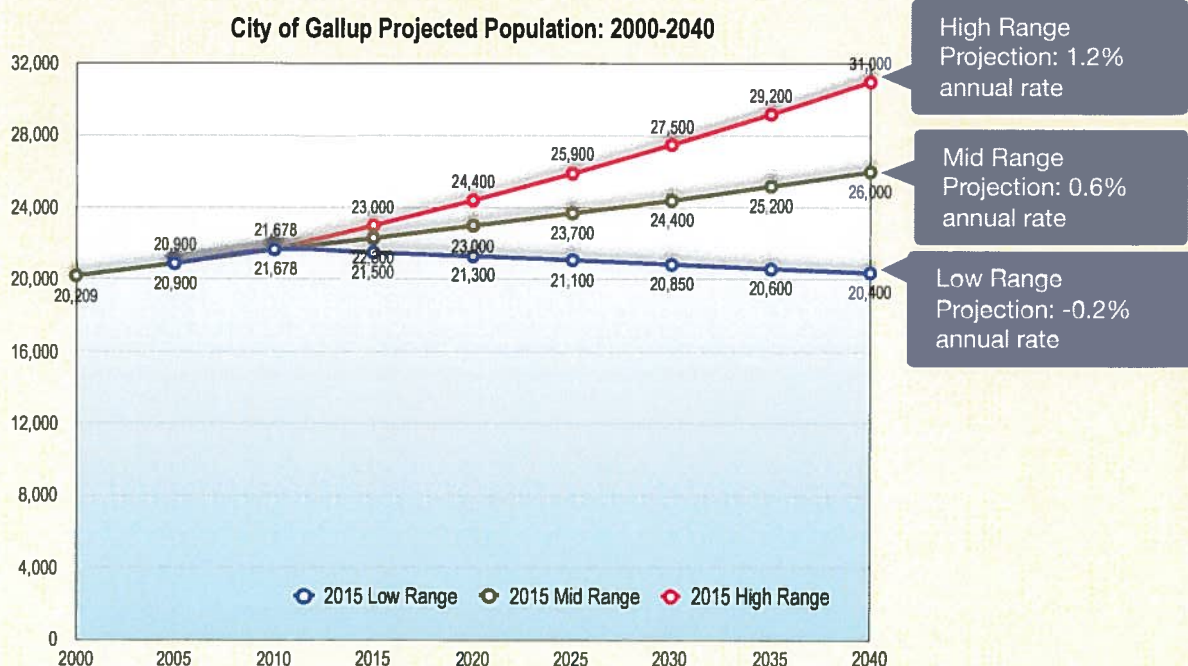
## POPULATION DRIVERS: ECONOMIC PROSPECTS

- ↑ Navajo Gallup Water Supply Project proceeding, should reach Gallup in 2023, enabling growth and development
- ↑ Widening U.S. 491 improves accessibility to north, to be completed within 2 years
- ↑ Greater Gallup EDC promoting and coordinating target industries
- ↑ Gallup Land Partners (GLP) energy logistics park looks promising
- ↑ Film industry potential for growth in Gallup
- ↑ Economic development incentives including LEDA, JTIP, IRBs
- ↑ 135 miles of hiking/biking trails in area spurs some tourism spending and may expand further

Gallup Growth Management Master Plan Update 2016

### Existing Conditions

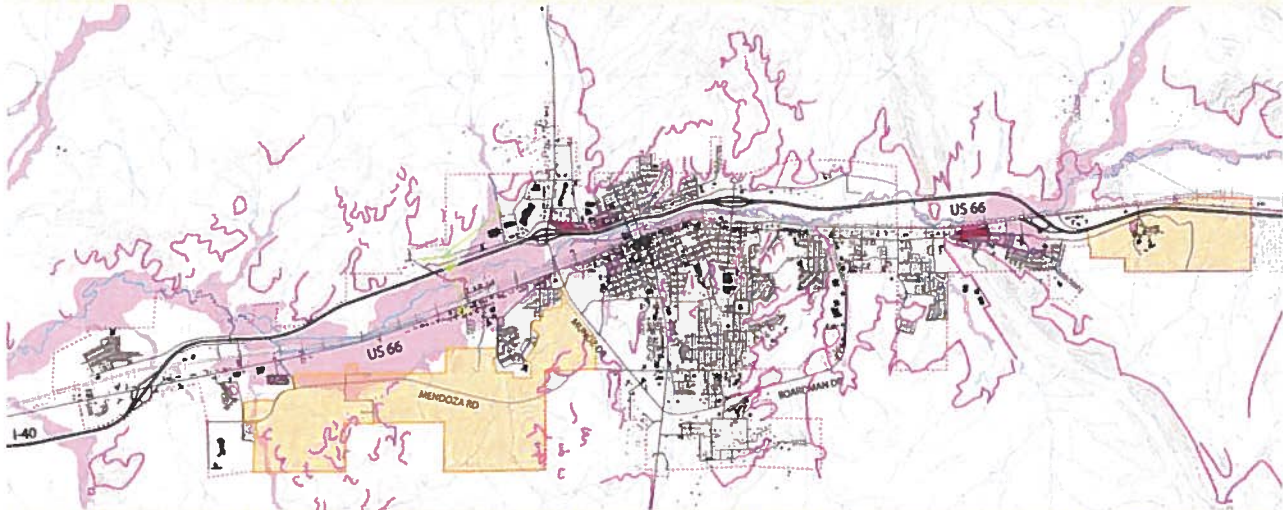
## POPULATION PROJECTIONS





# GALLUP AREA PHYSICAL FEATURES

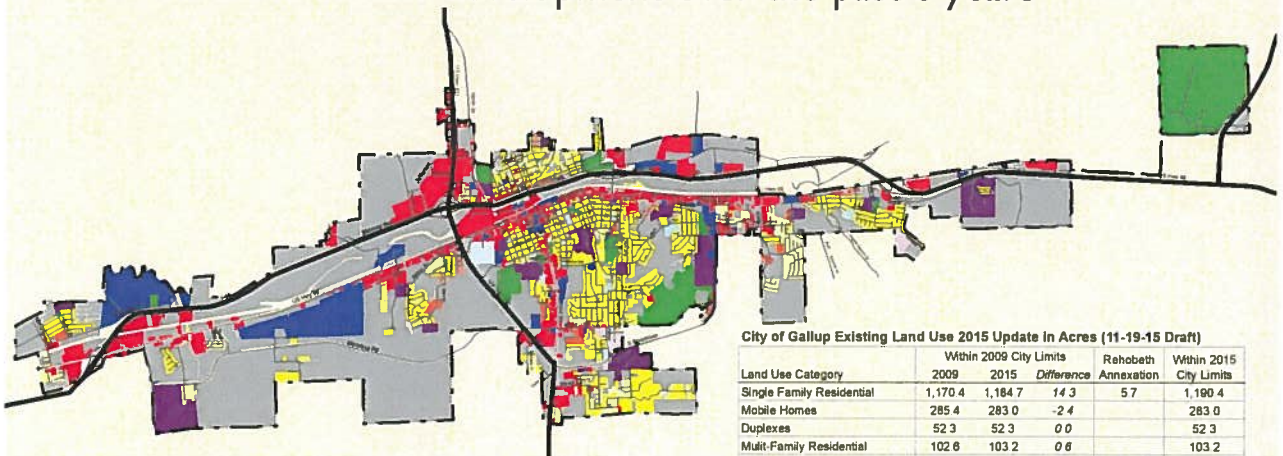
- Rocky terrain & steep slopes constrain development
- Hogbacks bottleneck to the east
- Flooding risk along Rio Puerco and some tributary arroyos



## Land Use

# EXISTING LAND USE

- Gallup gained 672 acres through the Rehoboth Annexation and ~52 acres of new development over the past 6 years



2015 Existing Land Use

City of Gallup Existing Land Use 2015 Update in Acres (11-19-15 Draft)

Land Use Category	Within 2009 City Limits			Rehoboth Annexation	Within 2015 City Limits
	2009	2015	Difference		
Single Family Residential	1,170.4	1,184.7	14.3	5.7	1,190.4
Mobile Homes	285.4	283.0	-2.4		283.0
Duplexes	52.3	52.3	0.0		52.3
Multi-Family Residential	102.8	103.2	0.4		103.2
Business	1,065.0	1,081.2	16.2	20.3	1,101.4
Public	667.2	678.0	10.8		678.0
Hospitals/Medical Clinics	53.7	55.8	2.1		55.8
Schools	445.4	443.5	-1.9	69.3	512.8
Churches/Quasi-Public	65.5	65.5	0.0	0.7	66.2
Cemetery	41.9	41.9	0.0		41.9
Parks and Recreational Facilities	920.3	929.1	8.8		929.1
Vacant	5,326.8	5,274.4	-52.4	480.0	5,754.4
Right of way	1,893.4	1,935.0	41.7	68.5	2,001.5
<b>Total</b>	<b>12,090.0</b>	<b>12,127.8</b>	<b>37.8</b>	<b>672.4</b>	<b>12,800.0</b>

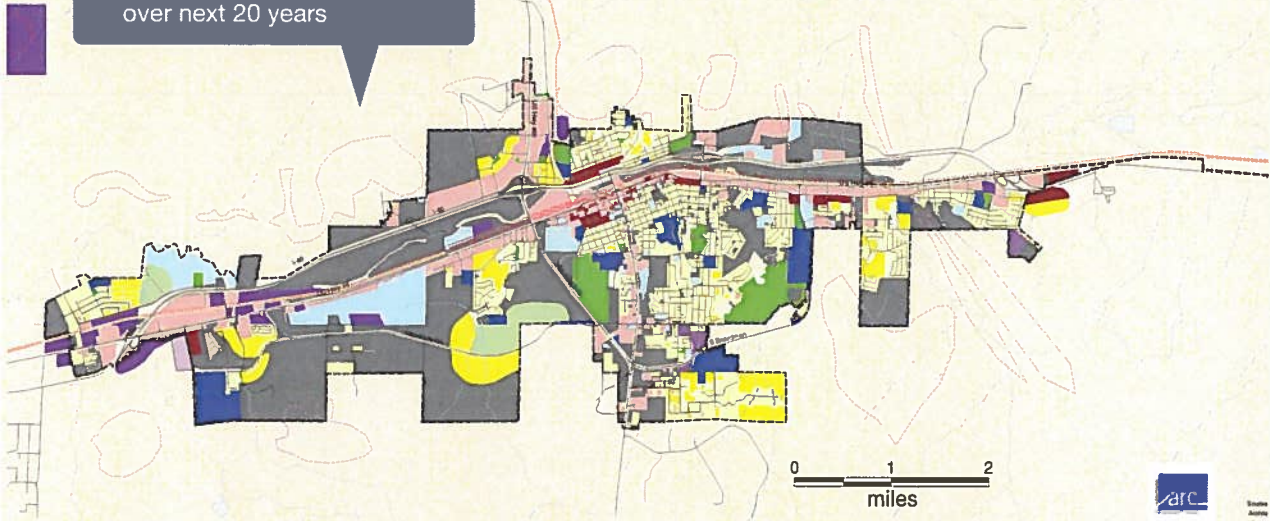
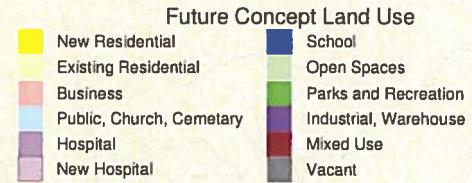
Source: ARC and City of Gallup analysis  
Small changes in city limits GIS resulted in a difference of 38 acres within the 2009 boundary



## FUTURE LAND USE

### 2009 City of Gallup Growth Management Master Plan:

- 1,200-1,600 acres of new development land (+24-34%) over next 20 years



Gallup Growth Management Master Plan Update 2016

## ISSUES AND OPPORTUNITIES

### P&Z strongly recommends

- Land Development Code update/overhaul - clarity, downtown parking, park dedication/fee-in-lieu, airport overlay, planned mixed use zone, planned unit development zone, reexamine all zone districts and zoning map to encourage in-fill
- Require master plans for large scale developments over 80 acres
- Extraterritorial planning, platting and zoning
- Annexation Priority Map updated

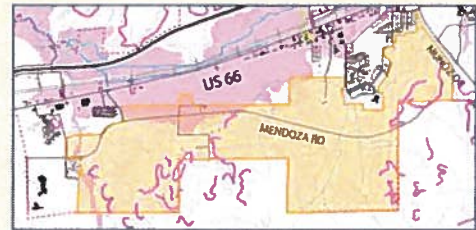
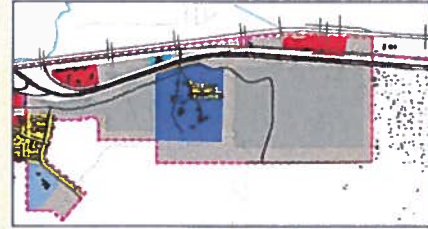


Gallup Growth Management Master Plan Update 2016 12



## LAND USE SECTORS ADDENDUM

- Rehoboth Annexation Area - encourage annexation of remainder of subarea, more detailed constraints mapping, mix of uses and phasing
- Mendoza Road Area - encourage master planning with mix of uses and utilities improvements coordinated with City and property owners
- Allison Bridge/Road Extension Area - phased road and bridge opens up new areas for development (north of freeway and south) and improves access to Old 66 and Mendoza Road area



## Economic Development

### ISSUES AND OPPORTUNITIES

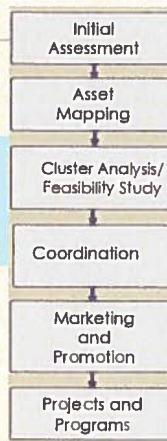
- Continuing needs to address area poverty, creation of jobs paying good wages, workforce participation and preparation, and growing current sectors
- Target industries creating base economy jobs identified by GGEDC: oil, gas, mining equipment, plastic products, warehousing and distribution, industrial machinery, food processing, and medical cluster development
- Film industry guidance and policies promote film activities with incentives and permitting process
- Update LEDA ordinance and guide application process
- Downtown MRA and Arts and Cultural District Plans - the plan incorporates some of key recommendations



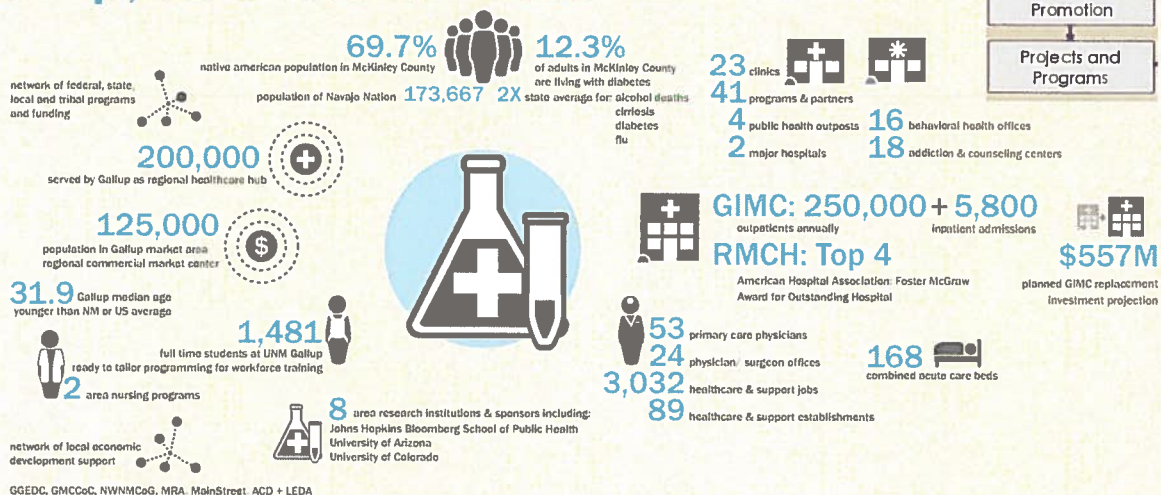
# MEDICAL CLUSTER

- Cluster consists of: medical treatment, prevention, research, and light manufacturing

## Stages in Cluster Development



## Gallup, NM: Medical Assets

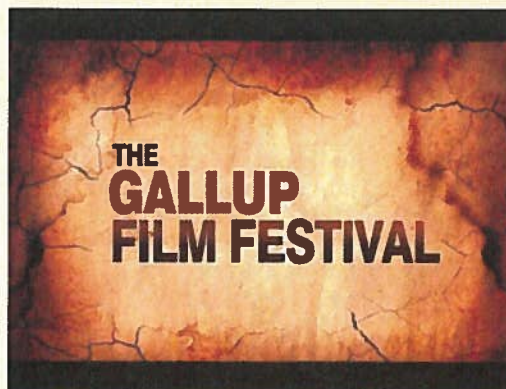


## Supporting Economic Development

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# FILM ORDINANCE

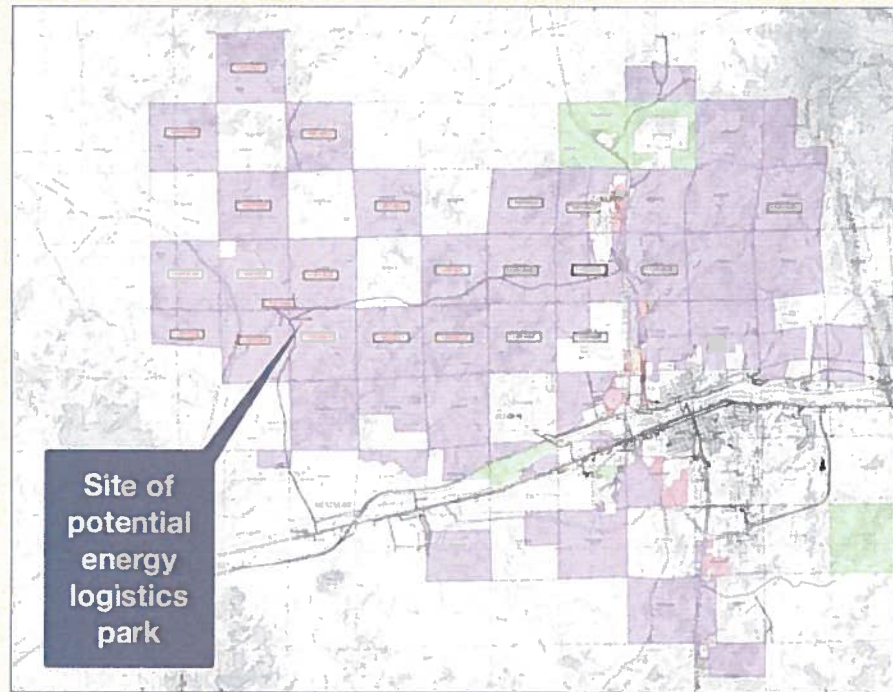
- Designate City point person (community services coordinator) to guide film producers through process, coordinate with state, process applications
- Application form should include film project description, liability requirements, and departmental review and approval process
  - Place form on City web site for convenience
- Enhance film production marketing



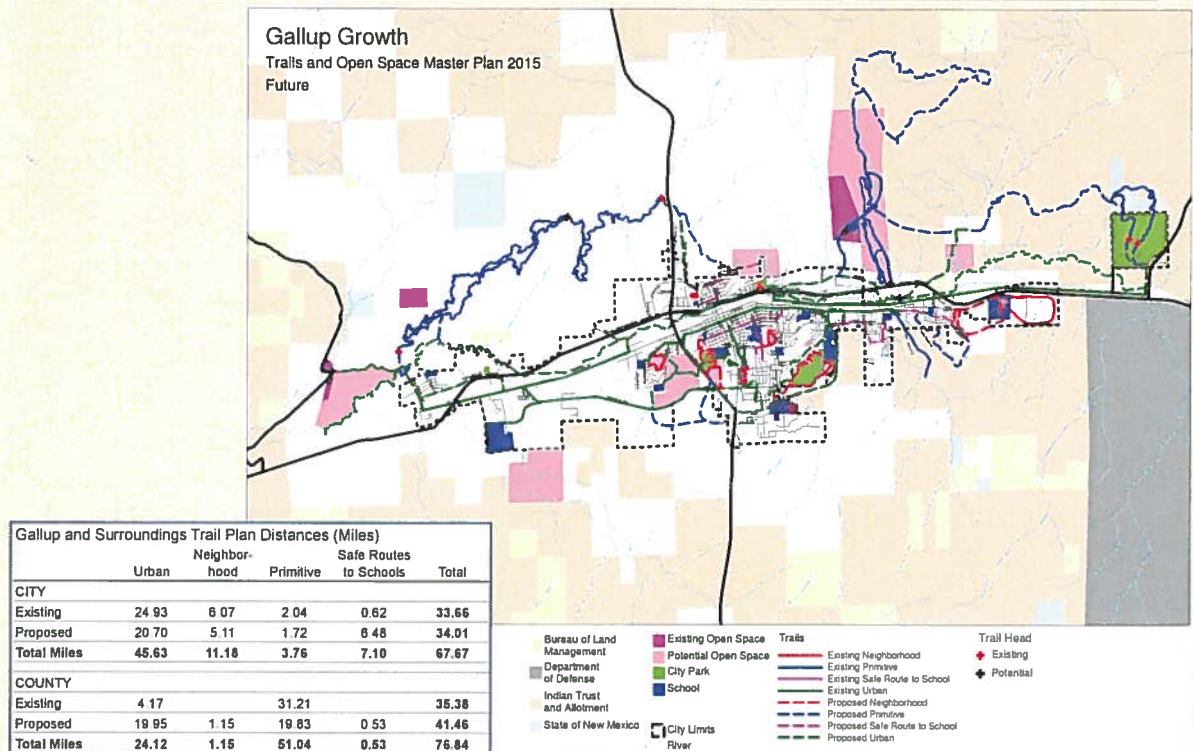


## ENERGY LOGISTICS PARK

- Gallup supports development
- 3,000 acre GLP site could be developed using Gallup utilities, streets, and other services

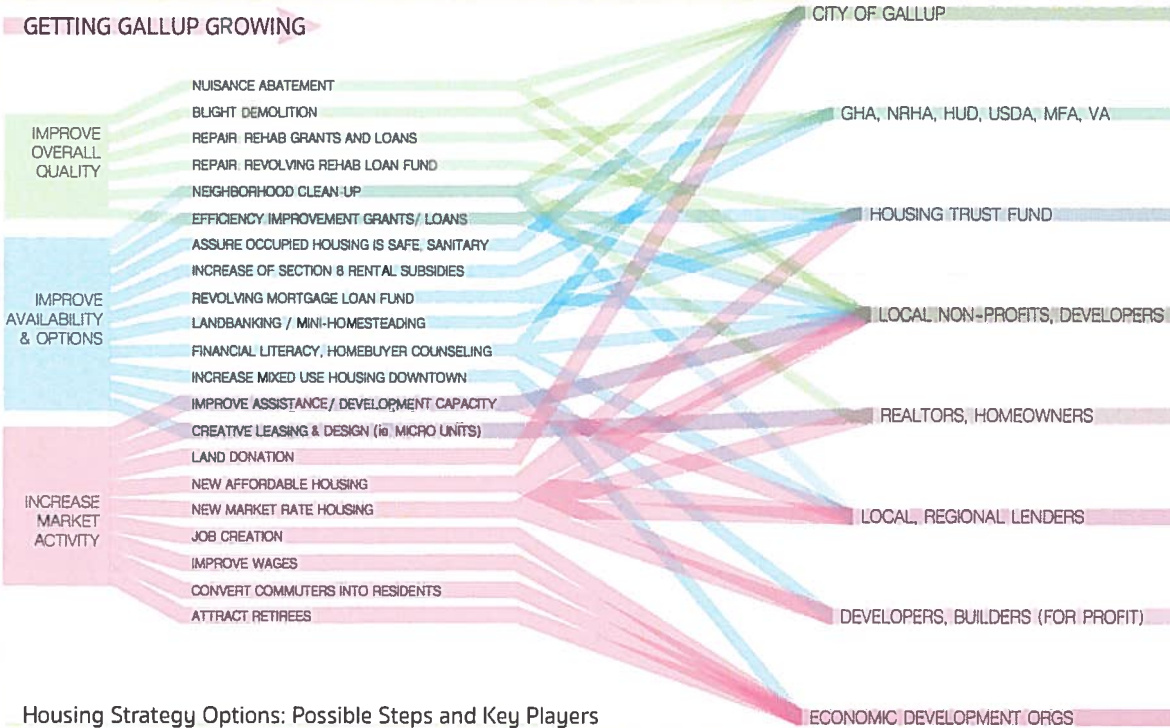


## MAP AND PRIORITY PROJECTS UPDATE





## DATA AND POLICIES UPDATE



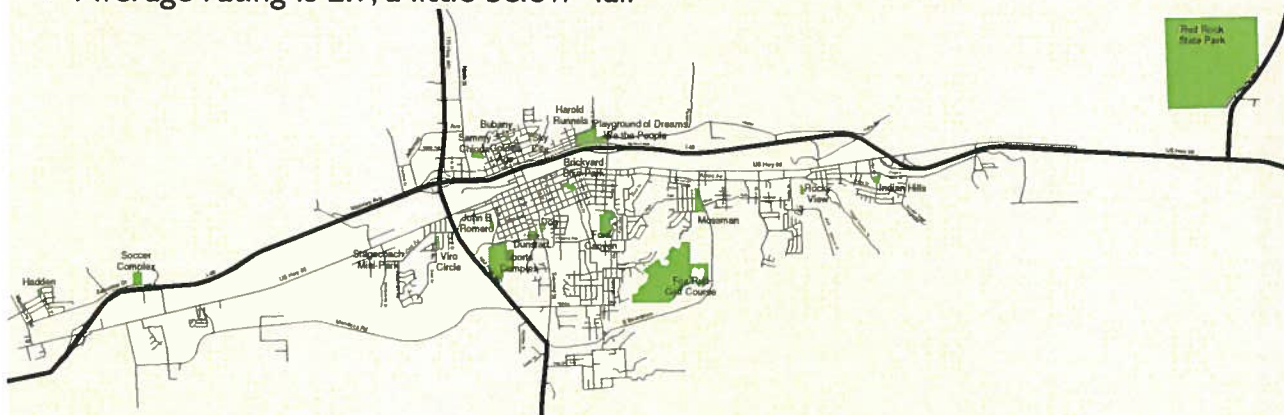
Housing Strategy Options: Possible Steps and Key Players

Gallup Growth Management Master Plan Update 2016 19

### Facilities and Parks: **Condition Assessments**

## INVENTORY OF CITY BUILDINGS AND PARKS

- ❖ Over 1/2 million square feet and ~1,220 acres
- ❖ 44 locations with buildings and 21 parks
- ❖ Condition assessments were conducted by City staff
- ❖ Average rating is 2.9, a little below "fair"
- ❖ Coordination with City CIP and with Asset Management Planning



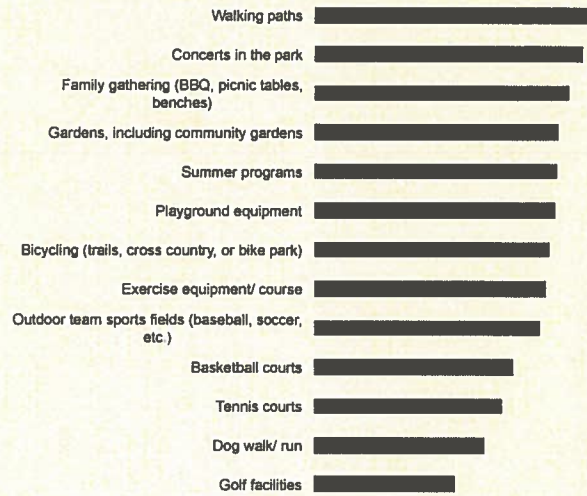
- ❖ 889 acres are in parks (green)



# COMMUNITY SURVEY

- The City conducted a survey of city parks users in August and September, 2015
- 219 surveys responses were received (39 paper and 180 on-line) by the end of September 2015

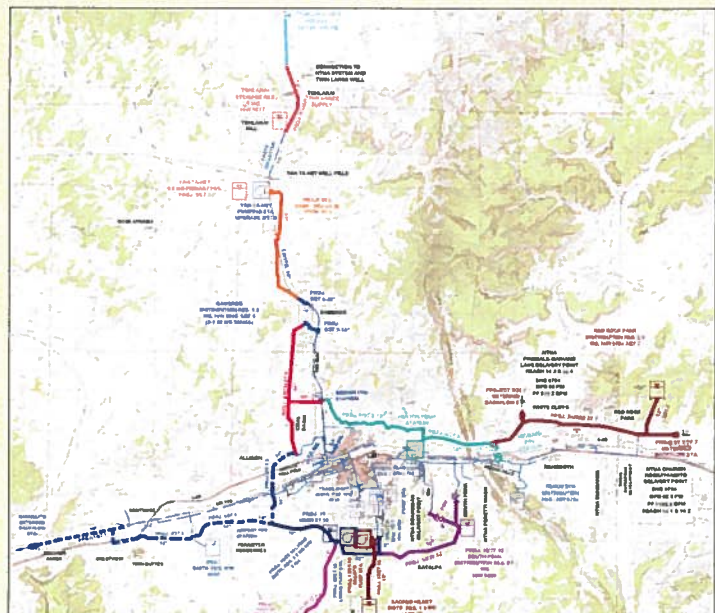
Weighted average to indicate highest projected use frequency



## Water

# WATER SUPPLY - CURRENT AND ALTERNATIVE SOURCES

- Current ground-water supplies significantly depleted
- Gallup has an application in to the state engineer to develop a G-22 well field that would supply the city with 5,000 AFY
- Gallup is in collaboration with the Navajo Nation and Jicarilla Apache Tribe developing the Navajo Gallup Water Supply Project
  - Will supply the city with 7,500 AFY
  - Project expected to deliver water to Gallup in 2023





## CONDITIONS AND RECOMMENDATIONS

### ■ Water

- Replace aging pipes and components of treatment plant; amend utility extension policy, conduct rate study

### ■ Sewer and Treated Effluent

- Replace aging pipes and components of treatment plant; evaluate pros and cons of regional wastewater treatment; continue to remedy problem of odor from treatment plant; expand treated effluent system

### ■ Electric

- Continue to improve transmission and service lines, promote energy conservation

### ■ Broadband

- Establish fiber optic redundancy; expand City fiber optic network

### ■ Solid Waste

- Continue curb-side pick up; promote increased recycling

## Hazards Mitigation

## CONDITIONS AND RECOMMENDATIONS

### ■ Promote disaster-resistant community

- Continue to map and and notify public of hazards; ensure building and zoning code enforcement; water conservation; drought planning

### ■ Emergency Response

- Review and update emergency response plans, evacuation plans and warning systems, continue training response team members

### ■ Flooding and Wildfire

- Map high risk areas and distribute information to public; identify and mitigate risks to critical public facilities

### ■ Man-made hazards

- Engage railroad personnel in setting a hazardous materials notification procedure

## **Minutes**

Special and Regular Meetings of January 12, 2016

Minutes of the Special Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec Avenue, at 4:30 p.m. on Tuesday, January 12, 2016.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

Mayor:	Jackie McKinney
Councilors:	Linda Garcia Allan Landavazo Yogash Kumar Fran Palochak
Also present:	Maryann Ustick, City Manager George Kozeliski, City Attorney

The Mayor and Councilors conducted a work session pertaining to the following item:

1. Electric Ten-Year Financial Plan – Richard Matzke, Director, Gallup Electric Department

Mr. Matzke presented an overview of the financial landmarks that the Electric Department has faced during the past two years:

- July 1, 2013 – the City began a 364-day contract extension with Public Service Company of New Mexico (PNM) which included a substantial wholesale rate increase to the City.
- September 2013 – the City enacted a 12% retail rate increase to all its customers.
- June 30, 2014 – the City began its first year of a contract with Continental Divide Electric Cooperative (CDEC), which resulted in approximately \$5 million decrease in its wholesale power costs during the first year of the contract.
- August 2014 – the City enacted a 3.5% retail rate decrease to its customers.
- January 2015 – the City enacted an 8% retail rate decrease to its customers.
- July 1, 2015 – the City began its second year of a contract with CDEC which included a 26% wholesale rate increase which is an approximate \$1.8 million impact to the City's wholesale power cost.

Mr. Matzke said the City consulted with RBC Capital Markets to prepare a ten-year financial plan for the Electric Department, which includes a review of long-range capital improvements, expense projections, a minimum fund balance recommendation, annual fund balance projections and an annual revenue requirement which will be used in future rate decisions.



## MINUTES

Special City Council Meeting – 1/12/2016

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Paul Cassidy of RBC Capital Markets provided a power point presentation on the Electric Department's Financial Plan. A copy of the power point is attached hereto and made part of these official Minutes. Mr. Cassidy said the financial plan should not be considered a rate analysis; however, the plan will help develop a revenue requirement model which will be used in making future rate decisions. The costs of providing services are typically determined based on a rate study or a cost of service study in which the costs are allocated among the various classes of users in the electric system. In explaining the projected net revenue available for debt service and coverage, Mr. Cassidy said an 8.75% rate increase is needed every year through 2026 to prevent rate spikes, to absorb Capital Improvement Project (CIP) costs and to end with the operating fund balance of a recommended minimum of 150 days cash on hand. If there is a delay in implementing the 8.75% increase by July 1, 2016, the rates will need to be increased by 9.8% on an annual basis. Based on conservative assumptions, the rate required for the annual increase could be reduced from 8.75% to 7.8% if the City financed \$2.015 million in 2018 and \$2.565 in 2020, through a loan agreement with the New Mexico Finance Authority or the public market. In concluding the presentation, Mr. Cassidy recommended that the City proceed with a cost of service study as soon as possible, implement a 1 year rate increase by adopting a rate ordinance (rates may be adjusted in the future based on the results of the cost of service study), and to analyze the financial plan every 12 months.

Discussion followed concerning the work being done to separate the financial data for each of the City's utilities and the need to review the financial model for the Navajo Gallup Water Supply Project and the City's waste water system.

There being no further business, the Work Session adjourned until the Regular Meeting at 6:00 P.M.

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Jackie McKinney, Mayor

ATTEST:

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Alfred Abeita II, City Clerk

Minutes of the Regular Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec Avenue, at 6:00 p.m. on Tuesday, January 12, 2016.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

Mayor: Jackie McKinney

Councilors: Linda Garcia  
Allan Landavazo  
Yogash Kumar  
Fran Palochak

Also present: Maryann Ustick, City Manager  
George Kozeliski, City Attorney

Presented to the Mayor and Councilors were the Minutes of the Special and Regular Meetings of December 8, 2015 and the Special Meeting of December 15, 2015.

Councilor Palochak made the motion to approve the aforementioned Minutes. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo, and Mayor McKinney all voted yes.

The Mayor and Councilors presented a Certificate of Retirement to Peter Becenti, Jr., Park Supervisor at Red Rock Park.

Presented to the Mayor and Councilors were the following Discussion/Action Topics:

1. Resolution No. R2016-2; Acceptance of Legislative Appropriation 15-0942 for the Allison Road Bridge Construction Project – Stan Henderson, Public Works Director

Mr. Henderson said Governor Susana Martinez authorized \$4.5 million in State funding for the project in three separate grants. Resolution No. R2016-2 would authorize the acceptance of \$2,250,000 of the State's appropriation for the project.

Councilor Garcia made the motion to approve Resolution No. R2016-2. Seconded by Councilor Palochak. Roll call: Councilors Garcia, Palochak, Landavazo, Kumar, and Mayor McKinney all voted yes.

2. Resolution No. R2016-3; Acceptance of Legislative Appropriation 15-1034 for the Allison Road Bridge Construction Project – Stan Henderson, Public Works Director

## MINUTES

Regular City Council Meeting – 1/12/2016

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Mr. Henderson said Resolution No. R2016-3 would authorize the acceptance of \$1,600,000 of the State's appropriation for the project.

Councilor Palochak made the motion to approve Resolution No. R2016-3. Seconded by Councilor Landavazo. Roll call: Councilors Palochak, Landavazo, Kumar, Garcia, and Mayor McKinney all voted aye.

3. Resolution No. R2016-4; Acceptance of Legislative Appropriation 15-1029 for the Allison Road Bridge Construction Project – Stan Henderson, Public Works Director

Mr. Henderson said Resolution No. R2016-4 would authorize the acceptance of \$650,000 of the State's appropriation for the project.

Councilor Kumar made the motion to approve Resolution No. R2016-4. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Landavazo, Garcia, and Mayor McKinney all voted yes.

4. Construction Contract Award for Downtown NM 118 Pedestrian Safety Improvements – Stan Henderson Public Works Director

Mr. Henderson presented the bid results for the work to be done at the intersections on NM Highway 118 from Strong Drive to Third Street. The project provides for traffic calming, pedestrian safety and Americans with Disabilities Act (ADA) improvements. As currently budgeted, Mr. Henderson said the project is underfunded by about \$100,000. He said there is a project savings of about \$130,000 from the recently completed College and Hospital Drive Reconstruction Project and recommended transferring the \$130,000 to the Downtown NM 118 Pedestrian Safety Project. Based on the bids submitted, Mr. Henderson recommended award of the construction contract to H.O. Construction in the amount of \$563,684.25.

Councilor Palochak made the motion to award the construction contract for the Downtown NM 118 Pedestrian Safety Improvements to H.O. Construction in the amount of \$563,684.25 and to approve the budget transfer of \$130,000 from the College and Hospital Drive Reconstruction Project to the Downtown NM 118 Pedestrian Safety Project. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo, and Mayor McKinney all voted yes.

5. Resolution No. R2016-5; A Resolution Adopting a City Residential Anti-Displacement and Relocation Assistance Plan for Calendar Year 2016 – Stan Henderson, Public Works Director



## MINUTES

Regular City Council Meeting – 1/12/2016

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Mr. Henderson said when federal funds, such as Community Development Block Grant (CDBG) funds are used in a project involving the acquisition, rehabilitation, or demolition of real property, the Uniform Relocation Assistance and Real Properties Acquisition Policies Act (URA) may apply. The purpose of the URA is to provide fair and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG funded project or activity. The proposed Resolution and Residential Anti-Displacement and Relocation Assistance Plan must be adopted on an annual basis regardless of whether the City is undertaking relocation activities.

Discussion followed concerning the City's utilization of its Residential Anti-Displacement and Relocation Assistance Plan when the City utilized CDBG funds to renovate homes over 20 years ago.

Councilor Garcia made the motion to approve Resolution No. R2016-5. Seconded by Councilor Landavazo. Roll call: Councilors Garcia, Landavazo, Palochak, Kumar, and Mayor McKinney all voted yes.

6. Resolution No. R2016-6; A Resolution Adopting a HUD Section 3 Plan for Calendar Year 2016 – Stan Henderson, Public Works Director

Mr. Henderson said Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement and individual self-sufficiency. The program requires recipients of certain HUD financial assistance such as CDBG funds, to provide job training, employment and contracting opportunities for low or very low income residents in connection with projects and activities in their community to the greatest extent feasible. The proposed Resolution and HUD Section 3 Plan must be adopted on an annual basis for CDBG projects.

Councilor Landavazo made the motion to approve Resolution No. R2016-6. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Garcia, Kumar, and Mayor McKinney all voted yes.

7. Resolution No. R2016-7; 2016 CDBG Citizens Participation Plan – Stan Henderson, Public Works Director

Mr. Henderson said a Citizen Participation Plan is a federal requirement for grantees receiving CDBG funds. The Citizen Participation Plan states that citizens will be provided with reasonable notice and timely access to local meetings to solicit their input and project ideas for the CDBG program. The proposed Resolution and Citizen Participation Plan must be adopted on an annual basis for CDBG projects.

## MINUTES

Regular City Council Meeting – 1/12/2016

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Discussion followed concerning the level of attendance and participation by citizens at public meetings to solicit their input and project ideas for the CDBG program. City staff's efforts to hold such meetings at Councilors' Neighborhood District Meetings were also discussed.

Councilor Palochak made the motion to approve Resolution No. R2016-7. Seconded by Councilor Kumar. Roll call: Councilor Palochak, Kumar, Garcia, Landavazo, and Mayor McKinney all voted yes.

8. Resolution No. R2016-8; 2016 CDBG Procurement Policy Adoption – Stan Henderson, Public Works Director

Mr. Henderson said the New Mexico Department of Finance and Administration requires the City to annually adopt a procurement policy for CDBG projects. The proposed resolution would certify the City's compliance with the Federal and New Mexico Procurement Codes.

Councilor Kumar made the motion to approve Resolution No. R2016-8. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Landavazo, Palochak, and Mayor McKinney all voted yes.

9. 2016 CDBG Fair Housing Proclamation – Stan Henderson, Public Works Director

Mr. Henderson said as a requirement for CDBG funding, each local government must annually certify that it will affirmatively further fair housing. He presented the proposed Fair Housing Proclamation which publicizes the City's commitment to fair housing and proclaims Tuesday, February 16, 2016 as Fair Housing Day in Gallup.

Councilor Landavazo made the motion to approve the 2016 CDBG Fair Housing Proclamation. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Garcia, Kumar, and Mayor McKinney all voted yes.

10. Appointment of Terry Proffitt to the Labor Management Relations Board – Mayor Jackie McKinney

Mayor McKinney said the current makeup of the Board consists of Mr. Proffitt representing management, Brenda Duran representing labor, and John Beeman serving as the impartial member of the Board. Although Mr. Proffitt has expressed interest in serving another term, Ms. Duran is unable to serve another term and Mr. Beeman has moved out of town. City staff is in the process of obtaining recommendations from the

## MINUTES

Regular City Council Meeting – 1/12/2016

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City's unions concerning the appointment of labor's representative on the Board. Once the members representing management and labor are in place, the two Board members will need to submit their nomination for the third member of the Board. In the meantime, Mayor McKinney recommended the re-appointment of Mr. Proffitt to serve as management's representative on the Board.

Councilor Palochak made the motion to approve the re-appointment of Terry Proffitt to the Labor Management Relations Board. Seconded by Councilor Kumar. Roll call: Councilors Palochak, Kumar, Garcia, Landavazo, and Mayor McKinney all voted yes.

11. Appointment of Roger Morris to the Gallup Housing Authority Board of Commissioners – Mayor Jackie McKinney

Mayor McKinney said the City suffered a great loss with the passing of Commissioner James Seay last October. Mayor McKinney recognized Commissioner Seay's dedication and service to the community. In order for the Gallup Housing Authority to move forward, Mayor McKinney recommended the appointment of Roger Morris to the Board of Commissioners.

Councilor Landavazo made the motion to approve the appointment of Roger Morris to the Gallup Housing Authority Board of Commissioners. Seconded by Councilor Kumar. Roll call: Councilors Landavazo, Kumar, Garcia, Palochak, and Mayor McKinney all voted yes.

12. Authority to Proceed with Legal Action to Foreclose the Lien on the Property Owned by B.E.I., Inc. (Doug Bishop) at 405 West Hill – George Kozeliski, City Attorney

Mr. Kozeliski said the City filed a lien on the property in the amount of \$43,130.18 for the cost for demolishing the property pursuant to condemnation action authorized by the Mayor and Councilors. Since Mr. Bishop has not responded to the City's demand for payment of the outstanding amount owed to the City, Mr. Kozeliski asked the Mayor and Councilors for authorization to proceed with legal action to foreclose the lien and to sell the property. Mr. Kozeliski also said the costs for demolition are significantly higher due to new federal laws requiring asbestos abatement on residential properties.

Councilor Landavazo asked about the current fair market value of the property to be sold. Mr. Kozeliski said the fair market value of the property is unknown at this time and the property taxes have not been paid for two years. Regarding the sale of the property, Mr. Kozeliski said the City may receive bids higher than the minimum bid since there are other structures that are being rented on the property. Mr. Kozeliski said the

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City may recover some of the cost of the demolition; however, it will not recover all of the costs due to delinquent taxes being owed on the property.

Councilor Garcia made the motion to proceed with legal action to foreclose the lien on the property owned by B.E.I., Inc. (Doug Bishop) at 405 West Hill. Seconded by Councilor Kumar. Roll call: Councilors Garcia, Kumar, Landavazo, Palochak, and Mayor McKinney all voted yes.

13. Ordinance No. C2016-1; An Ordinance Amending the Makeup of the Board Members on the Sustainable Gallup Board – George Kozeliski, City Attorney

Mr. Kozeliski said a recommendation has been made for all board members to be at-large members, residents of Gallup and for the City's Conservation Coordinator to be an ex-officio, non-voting member. The proposed ordinance would include the recommended changes and it would increase the at-large members on the board from six to seven.

Councilor Kumar made the motion to approve Ordinance No. C2016-1. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Landavazo, Garcia, and Mayor McKinney all voted yes.

14. Award of Contract for Golf Course Irrigation Improvements – Vince Tovar, Gallup Water and Sanitation Director

Mr. Tovar presented the results of the re-bid for the work to be done at the Fox Run Golf Course. He also recommended the approval a 10% contingency for the project.

Howard Kaplan, Wilson and Company, spoke in favor of Mr. Tovar's recommendation for a 10% contingency for the project. He also provided an overview of the bid process and recommended award of the contract to Mid-America Golf & Landscape, Inc. in the amount of \$2,980,381.24. George Radnovich, Sites Southwest, was also present to answer questions regarding the project.

Discussion followed concerning the allocation of the proposed 10% contingency for the project; the work to be done under the project including drainage improvements, pump station improvements, renovations of the pond areas; the time frame for the commencement and completion of the project; the length of time for the grass to germinate, thicken and grow in order for the course to become playable; and the amount of the bid compared to the engineer's estimate for the improvements.



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Councilor Kumar made the motion to award the contract for golf course irrigation improvements to Mid-America Golf & Landscape, Inc. in the amount of \$2,980,381.24 with the recommended contingency. Seconded by Councilor Landavazo. Roll call: Councilors Kumar, Landavazo, Palochak, Garcia, and Mayor McKinney all voted yes.

15. Resolution No. R2016-1; Annual Determination of Notice Under the Open Meetings Act – Alfred Abeita, City Clerk

Mr. Abeita said the New Mexico Open Meetings Act requires all public bodies to determine at least on an annual basis, what constitutes reasonable notice to the public of its meetings. The proposed resolution provides recommended notice procedures for the Council to conduct its regular, special, and emergency meetings. The proposed resolution is also considered sufficient and reasonable notice of the regular meetings of the City Council to be held at 6:00 p.m. on the second and fourth Tuesdays of each month.

Councilor Palochak made the motion to approve Resolution No. R2016-1. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo, and Mayor McKinney all voted yes.

16. **Public Hearing:** Proposed Issuance of a Restaurant (Beer and Wine) License to G & W Industries, Inc. d/b/a Smokey's, 505 North Highway 491 – George Kozeliski, City Attorney

Mr. Kozeliski presented the information relative to conducting the public hearing on the proposed issuance of the restaurant license. He said the proposed location for the license does not violate the distance requirements under the State Liquor Control Act with regards to the location of nearby churches and schools and the proposed location is in compliance with the City's zoning regulations. The only criteria the Mayor and Councilors could disapprove the issuance of the license is if the issuance of the license would be detrimental to the public health, safety, or morals of the residents of the Local Option District. Disapproval by the Mayor and Councilors on public health, safety or morals must be based on evidence pertaining to the specific applicant and location.

Mayor McKinney asked if there was anyone to present testimony against the issuance of the license. There was none.

Mayor McKinney asked if there anyone to present testimony for the issuance of the license.

Jay Mason, Attorney-at-Law representing G & W Industries, Inc., was duly sworn and

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stated that his clients intend to comply with the rules and regulations pertaining to the sale of beer and wine at their restaurant. Mr. Mason said the location of Smokey's is the former Furr's Restaurant and the business premises have been improved by the owners. He said support for the business has been expressed by the members of the City Council, members of the neighborhood and the owners of Rio West Mall. Mr. Mason said he and the owners of Smokey's are in attendance and are willing to answer any questions regarding the business.

Councilor Palochak asked if security was provided at the restaurant. Mr. Mason responded yes. Willie Roy, Jr. of G & W Industries, Inc. and co-owner of Smokey's, was duly sworn and said his company hired the security business at the mall to provide security services at Smokey's. Mr. Mason also testified that the security services are included in the lease of the property with Rio West Mall.

Councilor Landavazo said he recently visited Smokey's and was impressed with the investment made by the owners. Councilor Landavazo said the business is a great addition to the restaurant community in Gallup as he always encourages everyone to buy, believe and build Gallup at every City Council meeting.

Councilor Garcia said she also recently visited Smokey's and agrees with Councilor Landavazo's comments. Councilor Garcia said the business provides a great atmosphere for families and is an improvement to District 1 and Gallup as a whole. Councilor Garcia said she is very proud about local citizens investing their money in Gallup.

Mayor McKinney commended the owners on the improvements made to the interior of the restaurant. Mayor McKinney also commended the owners on the quality of food he sampled during a recent visit. Mayor McKinney said Smokey's will provide Gallup with a variety of food to entice tourists and local residents.

Councilor Kumar welcomed the owners and said he was pleased to see the Councilors show support of the issuance of the license. As a hotel owner, Councilor Kumar said customers need additional food choices in the community.

Councilor Garcia made the motion to approve the proposed issuance of a Restaurant (Beer and Wine) License to G & W Industries, Inc. d/b/a Smokey's, 505 North Highway 491. Seconded by Councilor Palochak. Roll call: Councilors Garcia, Palochak, Landavazo, Kumar, and Mayor McKinney all voted yes.

### **Comments by Public on Non-Agenda Items**

Peter Ippel expressed his concerns with Governor Martinez's position of not welcoming

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Syrian refugees to New Mexico. He asked the Mayor and Councilors to adopt a resolution to show support of welcoming Syrian refugees to Gallup. Mr. Ippel believes Gallup has a history of accepting people since it stood up against the rest of the country when Japanese-Americans were being sent to internment camps during World War II. He said the Governor's Office stated that the reason for the Governor's stance is for the security of all New Mexicans. Mr. Ippel does not believe the Governor's stance on the issue is in the best interest of security nor does he believe that the Governor has the authority to deny refugees. Although Gallup does not have a resettlement agency, which is required to have refugees in Gallup, Mr. Ippel said by adopting a resolution, Gallup can make a statement regarding the issue.

Mayor McKinney asked Ms. Ustick and Mr. Kozeliski to obtain additional information regarding the issue for the Mayor and Councilors. Once the Council reviews the information, Mayor McKinney said the Council may provide their input on the matter to Ms. Ustick.

### **Comments by Mayor and City Councilors**

Councilor Palochak commended the Gallup Police Department for all their work, especially with the capture of a fugitive from Taos. Councilor Palochak also commended the Electric Department for their work in restoring power to the Stagecoach area last night around 11:00 p.m. Councilor Palochak said she will hold her Neighborhood Meeting on Thursday, January 14, 2016 at 6:00 p.m. at Stagecoach Elementary School. She encouraged all residents of Gallup to attend.

Councilor Landavazo encouraged everyone to "keep building" and to "support Gallup."

Based on the award of the contract for the golf course irrigation improvements, Councilor Kumar said it was the right move to put money into the golf course since it has been neglected for a long time. Councilor Kumar said he hopes everyone will have a healthy and prosperous new year.

Councilor Garcia said she hold her Neighborhood Association Meetings on the last Wednesday of every month at the Northside Senior Center at 6:30 p.m. Unfortunately, she will need to cancel her January meeting since she will be out of town. Councilor Garcia's first meeting of the year will take place on Wednesday, February 24, 2016. In the meantime, Councilor Garcia asked everyone to call her if they need to contact her about any issues.

Mayor McKinney assured all residents that City crews are working to repair potholes on City streets. Every winter, Mayor McKinney said he receives phone calls immediately after every storm when the asphalt breaks apart. Mayor McKinney commended Mr.

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Henderson and his staff for their work in repairing the potholes. Mayor McKinney also said the City has to work with the New Mexico Department of Transportation for repairing the potholes on the State roadways in Gallup, which include Highway 66, Highway 491, Second Street and Maloney Avenue.

### **Comments by City Attorney and City Manager**

Mr. Kozeliski said the City will be hosting the State High School Rodeo Finals and State Junior High School Rodeo Finals later this year. Both rodeos will be combined and the dates of the finals will be determined.

Ms. Ustick said there will be a Work Session held on January 26, 2016 at 4:30 p.m. concerning the Growth Management Master Plan Update.

There being no further business, Councilor Landavazo made the motion to adjourn the meeting. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Garcia, Kumar, and Mayor McKinney all voted yes.

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Jackie McKinney, Mayor

ATTEST:

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Alfred Abeita II, City Clerk



## **Discussion/Action Topic 1**

Ordinance No. S2016-1;

An Ordinance Authorizing the Execution and Delivery of a  
Water Project Fund Loan/Grant Agreement By and Between  
the New Mexico Finance Authority and the City of Gallup

Vince Tovar, Director, Gallup Water and Sanitation Director

**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF  
ORDINANCE NO. S2016-1 OF THE CITY COUNCIL  
OF THE CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO  
JANUARY 26, 2016**

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF MCKINLEY )

The City Council (the "Governing Body") of the City of Gallup (the "Borrower/Grantee") met in a regular session in full conformity with the law and the rules and regulations of the Governing Body in the City Council Chambers of City Hall, 110 West Aztec Avenue, Gallup, New Mexico, being the meeting place of the Governing Body for the meeting held on the 26th day of January, 2016 at the hour of 6:00 p.m. Upon roll call, the following members were found to be present:

## Present:

**Mayor:**

**Councilors:**

**Absent:**

### Also Present:

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Thereupon, there were officially filed with the City Clerk copies of a proposed Ordinance and Water Project Fund Loan/Grant Agreement in final form, the proposed Ordinance being as hereinafter set forth:

*[Remainder of page intentionally left blank.]*



CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO  
ORDINANCE NO. S2016-1

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY" OR THE "LENDER/GRANTOR") AND THE CITY OF GALLUP (THE "BORROWER/GRANTEE"), IN THE TOTAL AMOUNT OF FOUR MILLION TWO HUNDRED NINETY-FIVE THOUSAND ONE HUNDRED SIXTY-SEVEN DOLLARS (\$4,295,167) EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PLANNING, DESIGN, AND CONSTRUCTION OF THE SACRED HEART STORAGE TANK, A 1.5 MG WATER STORAGE TANK, 12" WATERLINE, A NEW PUMP STATION, AND THE RED ROCK PARK STORAGE TANK, A 2.0 MG WATER TANK, 16" AND 12" WATERLINE AND A METERING STATION AND WILL CONNECT TO REACHES 14.1 AND 14.2 DELIVERING WATER TO COMMUNITIES AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT AND AN ADMINISTRATIVE FEE SOLELY FROM THE NET SYSTEM REVENUES OF THE JOINT WATER AND WASTEWATER SYSTEM OF THE BORROWER/GRANTEE; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; AUTHORIZING THE NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS ("NWNMCOG") TO ACT AS FISCAL ADMINISTRATOR OF THE LOAN/GRANT AGREEMENT PURSUANT TO THE FISCAL ADMINISTRATION AGREEMENT DATED AUGUST 11, 2015; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Ordinance unless the context requires otherwise.

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing incorporated municipality in good standing under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended; and

WHEREAS, NWNMCOG (as defined in Section 1 of this Ordinance) is fiscal administrator of this Agreement pursuant to the Fiscal Administration Agreement (as defined in Section 1 of this Ordinance); and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant Agreement and the Fiscal Administration Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO:

Section 1. Definitions. As used in this Ordinance the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the general laws of the State, particularly the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-10, as amended, and enactments of the Governing Body relating to the Loan/Grant Agreement, including this Ordinance, all as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which includes the total value of the Soft Match or Hard Match (each as defined in Section 2.5 of the Policies), which, in combination with the Loan/Grant Amount and other amounts available to the Borrower/Grantee, is sufficient to complete the Project. The Additional Funding Amount is eight hundred fifty-nine thousand thirty-three dollars (\$859,033).

“Administrative Fee” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee pursuant to Section 5.1(a)(iii) of the Loan/Grant Agreement.

“Authorized Officers” means any one or more of the Mayor, City Manager and City Clerk of the Borrower/Grantee; and with respect to the NWNMCOG, the Executive Director or any other officer or employee of the NWNMCOG designated in writing by the Executive Director.

“Board Rules” means Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC.

“Borrower/Grantee” means the City of Gallup in McKinley County, New Mexico.

“Closing Date” means the date of execution the Loan/Grant Agreement by the Borrower/Grantee and the Finance Authority.

“Colonias Infrastructure Act” means NMSA 1978, §§ 6-30-1 through 6-30-8, as amended.

“Completion Date” means the date of final payment of the cost of the Project.

“Conditions” has the meaning given to that term in the Loan/Grant Agreement.

“Eligible Legal Cost” has the meaning given to that term in the Loan/Grant Agreement.

“Eligible Fiscal Agent Fees” has the meaning given to that term in the Loan/Grant Agreement.

“Expense Account” means the account established by the Finance Authority in accordance with this Ordinance and held by the Finance Authority to pay the Expenses incurred by the Lender/Grantor in connection with the Loan/Grant Agreement and the Loan/Grant.

“Expenses” means the costs of the Lender/Grantor of originating and administering the Loan/Grant, including Eligible Legal Costs and Eligible Fiscal Agent Fees to the extent allowed under the Act, the Board Rules and applicable policies of the Water Trust Board.

“Finance Authority” means the New Mexico Finance Authority.

“Fiscal Administration Agreement” means the Administration Agreement between the City of Gallup, New Mexico and the Northwest New Mexico Council of Governments effective August 11, 2015, as amended from time to time.

“Fiscal Administrator” means the NWNMCOG.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Lender/Grantor establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the City Council of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and equals two million five hundred seventy-seven thousand one hundred dollars (\$2,577,100).



“Gross Revenues” means all income and revenues directly or indirectly derived by the Borrower/Grantee from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all revenues received by the Borrower/Grantee, or any municipal corporation or agency succeeding to the rights of the Borrower/Grantee, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System.

Gross Revenues do not include:

- (a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use;
- (b) Gross receipts taxes, other taxes and/or fees collected by the Borrower/Grantee and remitted to other governmental agencies; and
- (c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

“Lender/Grantor” means the Finance Authority.

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and equals one million seven hundred eighteen thousand sixty-seven dollars (\$1,718,067).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and equals four million two hundred ninety-five thousand one hundred sixty-seven dollars (\$4,295,167).

“Loan/Grant Agreement” means the Water Project Fund Loan/Grant Agreement entered into by and between the Borrower/Grantee, and the Finance Authority as authorized by this Ordinance.

“Net System Revenues” means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacement and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the water and wastewater utility system.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“NWNMCOG” means the Northwest New Mexico Council of Governments.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the Borrower/Grantee directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Borrower/Grantee’s general fund, liabilities incurred by the Borrower/Grantee as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

“Ordinance” means this Ordinance as it may be supplemented or amended from time to time.

“Pledged Revenues” means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount and Administrative Fee pursuant to this Ordinance and the Loan/Grant Agreement and described in the Term Sheet.

“Project” means the project described in the Term Sheet.

“Project Account” means the book account established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualifying Water Project” means a water project for (i) storage, conveyance or delivery of water to end-users; (ii) implementation of the federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; (iv) flood prevention or (v) conservation, recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to NMSA 1978, § 72-4A-9(B), as amended.

“State” means the State of New Mexico.

“System” means the joint water and wastewater utility system operated pursuant to the City of Gallup Municipal Code, Title 8 (Utilities) of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part.

“Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

“Useful Life” means the structural and material design life of the Project, including planning and design features, which shall not be less than twenty (20) years as required by the Act and the Board Rules.

“Water Project Fund” means the fund of the same name created pursuant to NMSA 1978, § 72-4A-9, as amended, and held and administered by the Finance Authority.

“Water Trust Board” or “WTB” means the water trust board created and established pursuant to the Act.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition and completion of the Project, the pledge of the Pledged Revenues to payment of amounts due under the Loan/Grant Agreement, and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan/Grant Agreement and the Fiscal Administration Agreement. The acquisition and completion of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee and the public it serves.

The Fiscal Administration Agreement providing that NWNMCOG will act as Fiscal Administrator under the Loan/Grant Agreement is authorized and approved.



Section 4. Findings. The Governing Body hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Borrower/Grantee and the public it serves.

B. Moneys available and on hand for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring and completing the Project but, together with the Loan/Grant Amount, are sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the best interest of the public health, safety, and welfare of the public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, the Additional Funding Amount and other amounts available to the Borrower/Grantee, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life, which is not less than twenty (20) years, as required by NMSA 1978, § 72-4A-7(A)(1), as amended.

E. Together with the Loan/Grant Amount, and other amounts available to the Borrower/Grantee, the Additional Funding Amount is now available to the Borrower/Grantee, and other amounts available to the Borrower/Grantee, will be sufficient to complete the Project and pay Expenses. If the Borrower/Grantee is unable to provide the Additional Funding Amount within six (6) months after the Closing Date, the Loan/Grant Agreement shall at the option of the Finance Authority, terminate and be of no further force or effect.

F. The Borrower/Grantee has met the requirements of Executive Order 2013-006 and has represented that it has met or will meet prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant.

G. The Borrower/Grantee and the other qualifying entities that are participants in the Project has or will acquire title to or easements or rights of way on the real property upon which the Project is being constructed or located prior to the disbursement of any portion of the Loan/Grant Amount for use for construction.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least three-fourths of all the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Borrower/Grantee and by the other qualifying entities involved in the Project and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of two million five hundred seventy-seven

thousand one hundred dollars (\$2,577,100) and borrowing the Loan Amount of one million seven hundred eighteen thousand sixty-seven dollars (\$1,718,067) to be utilized solely for the purpose of completing the Project and paying Expenses, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project and to pay Expenses.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Grant shall be in the amount of two million five hundred seventy-seven thousand one hundred dollars (\$2,577,100) and the Loan shall be in the amount of one million seven hundred eighteen thousand sixty-seven dollars (\$1,718,067). Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount, and the Administrative Fee shall be one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount and Administrative Fee shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account and Expense Account. The Borrower/Grantee hereby consents to creation of the Project Account and the Expense Account by the Finance Authority and further approves of the deposit or crediting of a portion of the Loan/Grant Amount in the Expense Account. Until the Completion Date, the amount of the Loan/Grant credited to the Project Account shall be used and paid out to the Fiscal Administrator solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement and the Fiscal Administration Agreement or to pay Expenses.

B. Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. Following the Completion Date or the earlier expiration of the time allowed for disbursement of Loan/Grant funds as provided in the Loan/Grant Agreement, any balance remaining in the Project Account shall be transferred and deposited into the Water Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

C. Finance Authority Not Responsible. Borrower/Grantee shall apply the funds derived from the Loan/Grant Agreement as provided therein, and in particular Article VII of the Loan/Grant Agreement. The Finance Authority shall not in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project. Lender/Grantor shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount and Administrative Fee directly from the Pledged Revenues to the Finance Authority as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount or other amounts due under the Loan/Grant Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount and the Administrative Fee, which lien shall be subordinate to any lien on the Pledged Revenues existing on the Closing Date and, further, shall be subordinate to all other indebtedness secured or that may in the future be secured by the Pledged Revenues, except, however, that the lien shall be on parity with any other lien, present or future, for the repayment of any other loan provided to the Borrower/Grantee by the Lender/Grantor pursuant to the Act or the Colonias Infrastructure Act.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Ordinance. This Ordinance after its adoption may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.



Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, ordinances, resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Closing Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Borrower/Grantee kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Borrower/Grantee, and this Ordinance shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Ordinance, this Ordinance shall be effective upon adoption of this Ordinance by the Governing Body.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

*[Remainder of page intentionally left blank.]*

*[Form of Notice of Adoption of Ordinance for Publication]*

CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO  
NOTICE OF ADOPTION OF ORDINANCE

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. S2016-1, duly adopted and approved by the City Council of the City of Gallup on January 26, 2016. A complete copy of the Ordinance is available for public inspection during normal and regular business hours in the office of the City Clerk at 110 W. Aztec Ave., Gallup, New Mexico 87301.

The title of the Ordinance is:

CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO  
ORDINANCE NO. S2016-1

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY" OR THE "LENDER/GRANTOR") AND THE CITY OF GALLUP (THE "BORROWER/GRANTEE"), IN THE TOTAL AMOUNT OF FOUR MILLION TWO HUNDRED NINETY-FIVE THOUSAND ONE HUNDRED SIXTY-SEVEN DOLLARS (\$4,295,167) EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PLANNING, DESIGN, AND CONSTRUCTION OF THE SACRED HEART STORAGE TANK, A 1.5 MG WATER STORAGE TANK, 12" WATERLINE, A NEW PUMP STATION, AND THE RED ROCK PARK STORAGE TANK, A 2.0 MG WATER TANK, 16" AND 12" WATERLINE AND A METERING STATION AND WILL CONNECT TO REACHES 14.1 AND 14.2 DELIVERING WATER TO COMMUNITIES AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR PAYMENT OF THE LOAN AMOUNT AND AN ADMINISTRATIVE FEE SOLELY FROM THE NET SYSTEM REVENUES OF THE JOINT WATER AND WASTEWATER SYSTEM OF THE BORROWER/GRANTEE; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; AUTHORIZING THE NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS ("NWNMCOG") TO ACT AS FISCAL ADMINISTRATOR OF THE LOAN/GRANT AGREEMENT PURSUANT TO THE FISCAL ADMINISTRATION AGREEMENT DATED AUGUST 11, 2015; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN

CONNECTION WITH THE EXECUTION AND DELIVERY OF THE  
LOAN/GRANT AGREEMENT.

A general summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

*[End of Form of Notice of Adoption for Publication]*

PASSED, APPROVED AND ADOPTED THIS 26TH DAY OF JANUARY, 2016.

CITY OF GALLUP,  
MCKINLEY COUNTY, NEW MEXICO

By \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Alfred Abeita II, City Clerk

*[Remainder of page intentionally left blank.]*



Governing Body Member \_\_\_\_\_ then moved adoption of the foregoing Ordinance, duly seconded by Governing Body Member \_\_\_\_\_.

The motion to adopt the Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

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Those Voting Nay:

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Those Absent:

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\_\_\_\_\_ ( ) Members of the Governing Body having voted in favor of the motion, the Mayor declared the motion carried and the Ordinance adopted, whereupon the Mayor and City Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Ordinance, the meeting upon motion duly made, seconded and carried, was adjourned.

CITY OF GALLUP,  
MCKINLEY COUNTY, NEW MEXICO

By \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

By \_\_\_\_\_  
Alfred Abeita II, City Clerk

*[Remainder of page intentionally left blank.]*

STATE OF NEW MEXICO

)

) ss.

COUNTY OF MCKINLEY

)

I, Alfred Abeita II, the duly qualified and acting City Clerk of the City of Gallup (the "Borrower/Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council of the Borrower/Grantee (the "Governing Body"), had and taken at a duly called regular meeting held in the City Council Chambers of City Hall, 110 West Aztec Avenue, Gallup, New Mexico, on January 26, 2016 at the hour of 6:00 p.m., insofar as the same relate to the adoption of Ordinance No. S2016-1 and the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including the Borrower/Grantee's Open Meetings Act Resolution No. R2016-1, adopted and approved on January 12, 2016 in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of March, 2016.

CITY OF GALLUP,  
MCKINLEY COUNTY, NEW MEXICO

By \_\_\_\_\_  
Alfred Abeita II, City Clerk

**EXHIBIT “A”**

Notice of Meeting, Meeting Agenda, Minutes,  
and Affidavit of Publication of Notice of Hearing



**\$4,295,167**

**WATER PROJECT FUND  
LOAN/GRANT AGREEMENT**

**Dated**

**March 4, 2016**

**By and Between the**

**NEW MEXICO FINANCE AUTHORITY,  
as Lender/Grantor,**

**and the**

**CITY OF GALLUP,  
McKinley County, New Mexico,  
as Borrower/Grantee,**

**and**

**THE NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS,  
acting as fiscal administrator for the Borrower/Grantee.**

**WATER PROJECT FUND  
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the “Agreement” or “Loan/Grant Agreement”) dated March 4, 2016, is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the “Finance Authority”) (the “Lender/Grantor”), the **CITY OF GALLUP** in McKinley County, New Mexico (the “Borrower/Grantee”), and **THE NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS** (“NWNMCOG”) as fiscal administrator for the Borrower/Grantee.

**W I T N E S S E T H:**

Capitalized terms used in the following preambles of this Agreement have the same meaning as defined in the preceding paragraph or in Article I of this Agreement unless the context requires otherwise.

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended; and

WHEREAS, the Act provides that the Finance Authority may make loans and grants from the Water Project Fund to qualifying entities for Qualifying Water Projects; and

WHEREAS, pursuant to the Act, the Water Trust Board has established the Board Rules governing the terms and conditions of loans and grants made from the Water Project Fund, as set out in Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC, pursuant to the Board Rules for Qualifying Water Projects; and

WHEREAS, pursuant to the Board Rules, except as provided in the Policies, a qualifying entity is expected to receive some portion of its funding as a loan in order to maximize the potential for the return of funds to the Water Project Fund, thereby increasing the limited financial resources expected to be available in the Water Project Fund; and

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, organized and existing incorporated municipality in good standing under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended, is a qualifying entity under the Act and is qualified for financial assistance as determined by the Finance Authority and approved by the Water Trust Board pursuant to the Board Rules and the Policies; and

WHEREAS, NWNMCOG is fiscal administrator of this Agreement pursuant to the Fiscal Administration Agreement (as defined in Article I of this Agreement); and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the constituent public it serves that the Borrower/Grantee enter into this

Agreement with the Lender/Grantor to borrow one million seven hundred eighteen thousand sixty-seven dollars (\$1,718,067) from the Lender/Grantor and to accept a grant in the amount of two million five hundred seventy-seven thousand one hundred dollars (\$2,577,100) from the Lender/Grantor to finance the costs of the Project, this Project being more particularly described in the Term Sheet; and

WHEREAS, based upon the Finance Authority's evaluation of the Application dated August 21, 2014 of the Borrower/Grantee and dealing with the Project, the Finance Authority staff has recommended to the Water Trust Board that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant, and the Water Trust Board has authorized the Finance Authority to enter into and administer this Agreement; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan and Administrative Fee, with a lien on the Pledged Revenues subordinate to all other liens thereon present and future, except that the lien on the Pledged Revenues of any future loans from the Lender/Grantor to the Borrower/Grantee pursuant to the Water Project Finance Act or the Colonias Infrastructure Act, secured by the Pledged Revenues shall be on a parity with this Loan/Grant; and

WHEREAS, 2015 N.M. Laws Ch. 88, being House Bill 578 of the 2015 Regular New Mexico Legislative Session, authorized the funding of the Project from the Water Project Fund; and

WHEREAS, the Water Trust Board has authorized the Finance Authority to enter into and administer this Agreement; and

WHEREAS, the Water Trust Board has determined that the Project is a Qualifying Water Project, and will directly enhance the health, safety, and welfare of the public served by the Borrower/Grantee; and

WHEREAS, the plans and specifications for the Project will be approved prior to the commencement of construction by the Finance Authority (or by the New Mexico Environment Department or other appropriate agency or entity on behalf of the Finance Authority, pursuant to an agreement between such agency or entity and the Finance Authority), and the plans and specifications for the Project incorporate available technologies and operational design for water use efficiency; and

WHEREAS, the execution and performance of this Agreement have been authorized, approved, and directed by all necessary and appropriate action of the Water Trust Board and the Finance Authority and their respective officers.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

## **ARTICLE I DEFINITIONS**

The capitalized terms defined in this Article I shall have the meanings assigned therein, unless the context clearly requires otherwise.

“Act” means the general laws of the State, particularly the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-10, as amended, and enactments of the Governing Body relating to the Loan/Grant Agreement, including the Ordinance, all as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which includes the total value of the Soft Match or Hard Match (each as defined in Section 2.5 of the Policies) which, in combination with the Loan/Grant Amount and other moneys available to the Borrower/Grantee, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is eight hundred fifty-nine thousand thirty-three dollars (\$859,033).

“Administrative Fee” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee pursuant to Section 5.1(a)(iii) of this Agreement.

“Agreement Term” means the term of this Agreement as provided under Article III of this Agreement.

“Application” means the New Mexico Water Trust Board Application for Financial Assistance dated August 21, 2014 of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the Mayor, City Manager and City Clerk thereof; with respect to the Finance Authority, any one or more of the Chairperson, Vice-Chairperson, Secretary and Chief Executive Officer of the Finance Authority, and any other officer or employee of the Finance Authority designated in writing by an Authorized Officer thereof; and with respect to the NWNMCOG, the Executive Director or any other officer or employee of the NWNMCOG designated in writing by the Executive Director.

“Board Rules” means Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC.

“Closing Date” means the date of execution of this Agreement by the Borrower/Grantee and the Finance Authority.

“Colonias Infrastructure Act” means NMSA 1978, §§ 6-30-1 through 6-30-8, as amended.

“Conditions” means the conditions to be satisfied prior either (1) to the submission of a request for payment by the Finance Authority to the State Board of Finance on behalf of the Borrower/Grantee, or (2) to disbursement of the Loan/Grant Amount, or any portion thereof, from the Water Project Fund, or which otherwise apply to the performance of this Agreement, including those set forth in the Term Sheet.

“Department of Finance and Administration” or “DFA” means the department of finance and administration of the State.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by this Agreement, in an amount not exceeding five (5) percent of the Loan/Grant Amount. The total amount of the combined Eligible Fiscal Agent Fees and Eligible Legal Fees may not exceed ten (10) percent of the total Water Project Fund Financial Assistance.

“Eligible Items” means eligible Project costs for which grants and loans may be made pursuant to NMSA 1978, § 72-4A-7(C), as amended, of the Act, the Board Rules and applicable Policies, and includes Expenses.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project, in an amount not exceeding ten (10) percent of the Loan/Grant Amount, but does not include adjudication services. The total amount of the combined Eligible Fiscal Agent Fees and Eligible Legal Fees may not exceed ten (10) percent of the total Loan/Grant Amount.

“Event of Default” means one or more events of default as defined in Section 10.1 of this Agreement.

“Expense Account” means the account established by the Finance Authority in accordance with the Ordinance and held by the Finance Authority to pay the Expenses incurred by the Lender/Grantor in connection with the Loan/Grant Agreement and the Loan/Grant.

“Expenses” means the costs of the Lender/Grantor of originating and administering the Loan/Grant, and includes Eligible Legal Costs and Eligible Fiscal Agent Fees to the extent allowed under the Act, the Board Rules, other applicable statutes and rules, and applicable Policies.

“Fiscal Administration Agreement” means the Administration Agreement between the City of Gallup, New Mexico and the Northwest New Mexico Council of Governments effective August 11, 2015, as amended from time to time.

“Fiscal Administrator” means the NWNMCOG.

“Fiscal Year” means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period



which any appropriate authority of the Borrower/Grantee may hereafter establish for the Borrower/Grantee as its fiscal year.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee, consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board, or other principle-setting body acceptable to the Lender/Grantor, establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the City Council of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and equals two million five hundred seventy-seven thousand one hundred dollars (\$2,577,100).

“Gross Revenues” means all income and revenues directly or indirectly derived by the Borrower/Grantee from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all revenues received by the Borrower/Grantee, or any municipal corporation or agency succeeding to the rights of the Borrower/Grantee, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Borrower/Grantee and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Loan/Grant Agreement and not solely to the particular section or paragraph of this Loan/Grant Agreement in which such word is used.

“Interest Component” means the portion of each Loan Payment paid as interest on this Loan/Grant Agreement, if any, as shown on Exhibit “C” hereto.

“Lender/Grantor” means the Finance Authority.

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to this Agreement for the purpose of funding the Project and equals one million seven hundred eighteen thousand sixty-seven dollars (\$1,718,067).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and equals four million two hundred ninety-five thousand one hundred sixty-seven dollars (\$4,295,167).

“Loan Payments” means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Borrower/Grantee as payment of this Loan/Grant Agreement as shown on Exhibit “C” hereto.

“Net System Revenues” means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacements and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the water and wastewater utility system.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the Borrower/Grantee directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Borrower/Grantee's general fund, liabilities incurred by the Borrower/Grantee as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Ordinance" means the Borrower/Grantee's Ordinance No. S2016-1, adopted January 26, 2016, authorizing the acceptance of the Loan/Grant and the execution of this Agreement.

"Pledged Revenues" means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount and Administrative Fees pursuant to the Ordinance and this Loan/Grant Agreement and described in the Term Sheet.

"Policies" means the Water Trust Board Water Project Fund Project Management Policies approved by the Water Trust Board and the Finance Authority, as amended and supplemented from time to time.

"Principal Component" means the portion of each Loan Payment paid as principal on this Loan/Grant Agreement as shown on Exhibit "C" hereto.

"Project" means the project described in the Term Sheet.

"Project Account" means the book account established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

"Qualifying Water Project" means a water project for (i) storage, conveyance or delivery of water to end-users; (ii) implementation of the federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; (iv) flood prevention or (v) conservation, recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to NMSA 1978, § 72-4A-9(B), as amended.

"State" means the State of New Mexico.

"State Board of Finance" means the State board of finance created pursuant to NMSA 1978, §§ 6-1-1 through 6-1-13, as amended.

“System” means the joint water and wastewater utility system operated pursuant to the City of Gallup Municipal Code, Title 8 (Utilities) of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part.

“Term Sheet” means Exhibit “A” attached to this Agreement.

“Useful Life” means the structural and material design life of the Project including planning and design features, which shall not be less than twenty (20) years as required by the Act and the Board Rules.

“Water Project Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Water Trust Board” or “WTB” means the water trust board created and established pursuant to the Act.

## **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.1 Representations, Covenants and Warranties of the Borrower/Grantee: The Borrower/Grantee represents, covenants and warrants as follows:

(a) Binding Nature of Covenants; Enforceability. All covenants, stipulations, obligations, and agreements of the Borrower/Grantee contained in this Loan/Grant Agreement shall be deemed to be the covenants, stipulations, obligations, and agreements of the Borrower/Grantee to the full extent authorized or permitted by law, and such covenants, stipulations, obligations, and agreements shall be binding upon the Borrower/Grantee and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations, and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Agreement, all rights, powers, and privileges conferred and duties and liabilities imposed upon the Borrower/Grantee by the provisions of this Agreement and the Ordinance shall be exercised or performed by the Borrower/Grantee or by such members, officers, or officials of the Borrower/Grantee as may be required by law to exercise such powers and to perform such duties.

(b) Authorization of Agreement. The Borrower/Grantee is a qualifying entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved its acceptance of the Loan/Grant and the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement.

(c) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the distribution of the Loan/Grant Amount shall be deemed to be a distribution to the Borrower/Grantee first of the Loan Amount and then, once an amount equal to

the Loan Amount has been distributed, of the Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project as well as the payment of the Expenses, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Additional Funding Amount and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety and to pay the Expenses.

(d) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Amount and Administrative Fee as provided in this Agreement. The Loan and Administrative Fee shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee, in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(e) Scope of Project; Completion of Project; Compliance with Laws. The Project is for storage, conveyance or delivery of water to end users. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. In particular, the Project will consist of planning, design, and construction of the Sacred Heart storage tank, a 1.5 MG water storage tank, 12" waterline, a new pump station, and the Red Rock Park storage tank, a 2.0 MG water tank, 16" and 12" waterline and a metering station and will connect to Reaches 14.1 and 14.2 delivering water to communities and shall include such other related work and revisions necessary to complete the Project. The Project is more particularly described in the Term Sheet. The Project will be completed with all practical dispatch and will be completed, operated and maintained so as to comply with all applicable federal, state and local laws, ordinances, resolutions and regulations and all current and future orders of all courts having jurisdiction over the Borrower/Grantee relating to the acquisition, operation, maintenance and completion of the Project and to the use of the Loan/Grant proceeds.

(f) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the public it serves.

(g) Agreement Term Not Less than Useful Life. The Agreement Term is not less than the Useful Life of the Project, which is not less than twenty (20) years, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

(h) Amount of Agreement. The sum of the Grant Amount, the Loan Amount, and the Additional Funding Amount (and as set forth on the Term Sheet) does not exceed the cost of the Project and the Expenses.

(i) No Breach or Default Caused by Agreement. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and Conditions in the Agreement, nor the consummation of the transactions contemplated herein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or



instrument to which the Borrower/Grantee is a party or by which the Borrower/Grantee is bound, or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower/Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(j) Irrevocability of Enactments. While this Agreement remains outstanding, any ordinance, resolution or other enactment of the Governing Body accepting the terms hereof, pledging the Pledged Revenues, or in any way relating to the Loan/Grant or this Agreement, including the Ordinance, shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest has been repaid, or provision made for payment thereof, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof. The Borrower/Grantee shall not impair the rights of the Finance Authority or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(k) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute this Agreement or to comply with its obligations hereunder. Neither the execution of this Agreement by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations hereunder requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(l) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Agreement, would constitute an Event of Default on the part of the Borrower/Grantee hereunder.

(m) Expected Coverage Ratio. The Pledged Revenues from the Fiscal Year in which the Closing Date occurs are reasonably expected to equal or exceed and, on an ongoing basis during each Fiscal year during the Agreement Term are reasonably expected to equal or exceed, one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(n) Financial Capability; Budgeting of Pledged Revenues; Approval by Department of Finance and Administration. The Borrower/Grantee meets and will meet during the Agreement Term the requirements of financial capability set by the Water Trust Board and the Finance Authority. The Pledged Revenues will be sufficient to make the Loan Payments, as and when due. The Borrower/Grantee will adequately budget for the Loan Payments and other amounts payable by the Borrower/Grantee under this Agreement and will submit such budget on an annual basis to the Department of Finance and Administration for review and verification of compliance with this requirement.

(o) Rate Covenant. The Borrower/Grantee covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal year in which the Loan is outstanding the Gross Revenues shall at least equal the Operation and

Maintenance Expenses of the System for the Fiscal year, plus one hundred percent (100%) of the maximum annual principal and interest payments due on all outstanding obligations payable from the Pledged Revenues.

(p) Borrower/Grantee's Existence. The Borrower/Grantee will maintain its legal identity and existence so long as this Agreement remains outstanding unless another political subdivision, State agency or other entity by operation of law succeeds to the liabilities, rights and duties of the Borrower/Grantee under this Agreement without adversely affecting to any substantial degree the privileges and rights of the Lender/Grantor.

(q) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The Borrower/Grantee shall not sell, lease, mortgage, pledge, relocate or otherwise dispose of or transfer the Project, or any part of the Project during the Useful Life of the System, or any part of the System during the Agreement Term; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee and the other qualifying entities may, with the express written approval of the Lender/Grantor and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during its Useful Life. Any, such agreement shall provide that the Lender/Grantor shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity (as defined by the Act) owning or operating any portion of the Project during its Useful Life. If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other qualifying entity to abide by these restrictions with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life. The provisions of this Section shall remain effective and enforceable by the Lender/Grantor for the duration of the Useful Life of the Project.

(r) Title and Rights of Way. The Borrower/Grantee has or, prior to commencing construction, shall obtain title to, easements, rights of way or use permits on the real property upon which the Project is being constructed, located, completed or extended, and if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, such other qualifying entity has title to such real property. As required by NMSA 1978, § 72-4A-7(A)(3), as amended, of the Act and the Board Rules as a Condition to any disbursement of the Loan/Grant Amount for Project construction, the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that the Borrower/Grantee has proper title to, easements, rights of way or use permits on the real property upon or through which the Project is to be constructed, located, completed or extended. If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the

Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that such other qualifying entity has proper title to such real property.

(s) Additional Funding Amount. Together with the Loan/Grant Amount and other amounts available to the Borrower/Grantee, the Additional Funding Amount is now available to the Borrower/Grantee, or will become available to the Borrower/Grantee within six (6) months after the Closing Date, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project. If any other additional expenses are incurred, the Borrower/Grantee shall be responsible for payment of such expenses.

(t) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended. Upon request by the Finance Authority, the Borrower/Grantee shall provide the requesting party a copy of any audit prepared pursuant to the State Audit Act.

(u) Conservation Plan. The Borrower/Grantee has submitted a water conservation plan or one is on file with the State engineer, as required by NMSA 1978, § 72-4A-7, as amended.

(v) Efficient Operation. The Borrower/Grantee will operate the System so long as this Loan/Grant Agreement is outstanding, will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and sufficient to supply reasonable demands for System services.

(w) Records. So long as the Loan/Grant Agreement remains outstanding, proper books of record and account will be kept by the Borrower/Grantee in accordance with Generally Accepted Accounting Principles, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers for the water system and the sanitary sewer; (ii) the revenues separately received from charges by classes of customers, including but not necessarily limited to classification by facilities; and (iii) a detailed statement of the expenses of the System.

(x) Billing Procedure. Bills for water and sanitary sewer utility services or facilities, or any combination, furnished by or through the System, shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the Borrower/Grantee. If permitted by law, if a bill is not paid within the period of time required by such ordinance or regulation, water and sanitary sewer utility services shall be discontinued as required by such ordinance or regulation, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Water and sanitary sewer utility services may be billed jointly with each other, provided that each such joint bill shall show separately the water and sanitary sewer utility charges.

(y) Competent Management. The Borrower/Grantee shall employ or contract for experienced and competent personnel to manage the System.

(z) Executive Order 2013-006 Requirements. The Borrower/Grantee has met the requirements of Executive Order 2013-006 and it has met or will meet prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the Water Trust Board; and

Section 2.2 Representations, Covenants, Warranties and Findings of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Borrower/Grantee as follows:

(a) Authority of Finance Authority. The Finance Authority has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Agreement and, by proper action, has duly authorized the execution and delivery of this Agreement.

(b) Legal, Valid and Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the Finance Authority enforceable in accordance with its terms.

### **ARTICLE III AGREEMENT TERM**

The Agreement Term shall commence on the Closing Date and shall terminate at the end of the Useful Life of the Project, which in no event shall be less than twenty (20) years, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

### **ARTICLE IV LOAN/GRANT AMOUNT DISBURSEMENT CONDITIONS**

Section 4.1 Conditions Precedent to Disbursement of Loan/Grant. Prior to either (1) the submission of any request for payment by the Finance Authority to the State Board of Finance on behalf of the Borrower/Grantee for payment of any requisition of the Loan/Grant Amount or any portion thereof, or (2) the disbursement of the Loan/Grant Amount or any portion thereof by the Finance Authority from the Water Project Fund, the following Conditions and readiness to proceed items shall be satisfied:

(a) The Finance Authority, on behalf of the Water Trust Board, shall have determined that the Borrower/Grantee has met the Conditions and readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the Water Trust Board including any Conditions set out in the Term Sheet; and

(b) The Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to or easements, rights of way, or permits on the real

property upon or through which the Project is to be constructed, located, completed or extended; and

(c) If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that such other qualifying entity has proper title to such real property; and

(d) Prior to the disbursement of any portion of the Loan/Grant Amount for purposes of construction of the Project, the plans and specifications funded with the proceeds of this Agreement will be approved on behalf of the Finance Authority as required by NMSA 1978, § 72-4A-7(B), as amended, by the New Mexico Environment Department, and the Borrower/Grantee shall have provided written evidence of such approval to the Finance Authority; and

(e) Prior to disbursement of any portion of the Loan/Grant Amount, the Borrower/Grantee shall, if required, obtain and provide written documentation satisfactory to the Finance Authority of consent from the New Mexico Environment Department to incur additional indebtedness on the System of the Borrower/Grantee; and

(f) Except as otherwise expressly provided in the Conditions, the Borrower/Grantee shall have certified to the Lender/Grantor that the Additional Funding Amount is available for the Project, and, in addition, shall have provided additional evidence reasonably acceptable to the Lender/Grantor of the availability of the Additional Funding Amount; and

(g) The Borrower/Grantee shall be in compliance with the provisions of this Agreement.

Section 4.2 Determination of Eligibility Is Condition Precedent to Disbursement. No request for payment shall be made to the State Board of Finance by the Finance Authority on behalf of the Borrower/Grantee, nor shall any disbursement be made from the Water Project Fund, for any requisition of any portion of the Loan/Grant Amount, except upon a determination by the Finance Authority that such disbursement is for payment of Eligible Items, and that the request for payment or disbursement does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies governing the Water Project Fund. The Finance Authority, as a condition precedent to submitting any request for payment to the State Board of Finance or making any requested disbursement from the Water Project Fund, may require submittal of such documentation as the Finance Authority deems necessary, in its sole and absolute discretion, for a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.



**ARTICLE V**  
**LOAN TO THE BORROWER/GRANTEE; GRANT TO THE**  
**BORROWER/GRANTEE; APPLICATION OF MONEYS**

Section 5.1    Loan and Grant to the Borrower/Grantee.

(a)    Loan to the Borrower/Grantee. The Lender/Grantor hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Lender/Grantor, without interest, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit “C” of this Agreement.

(i)    Subordinate Nature of Loan Amount and Administrative Fee Obligation. The obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Lender/Grantor pursuant to the Act or the Colonias Infrastructure Act.

(ii)    Administrative Fee. The Borrower/Grantee shall, on an annual basis beginning June 1, 2016, pay to the Lender/Grantor an administrative fee equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee as provided by this Agreement. Any such Administrative Fee payment shall be due irrespective of whether or not a hardship waiver of payment is granted to the Borrower/Grantee for the principal payment otherwise due on June 1 of the applicable year or any other year.

(iii)    Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, no later than April 1 of each such year, the Borrower/Grantee may apply in writing to the Finance Authority for a determination of whether the annual principal payment on the Loan Amount otherwise due on the upcoming June 1 of such year should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves. Although such determination shall be made by the New Mexico Department of Finance and Administration (the “DFA”), the Borrower/Grantee shall submit such application to DFA through the Finance Authority for determination by DFA and shall submit with such application sufficient documentation of the existence of such undue hardship as is reasonably required by DFA (as determined by the Finance Authority and DFA) to make such determination, and the Borrower/Grantee shall promptly respond to additional requests for information from DFA or the Finance Authority. Such application shall be executed by the Authorized Officers of the Borrower/Grantee. For purposes of this Agreement and that determination, an “undue hardship” shall be deemed to exist if DFA determines that the Borrower/Grantee demonstrates economic need and the inability to pay on a timely basis such annual principal payment on the Loan Amount. DFA shall make such determination no later

than May 15 of the applicable year, and the Finance Authority shall promptly communicate to the Borrower/Grantee in writing the results of such determination. Upon receipt of written notice of such determination, either the principal payment otherwise due on June 1 of such year shall be forgiven (in the event of a determination of undue hardship) or such principal payment shall remain outstanding and due and payable on such date (in the event no undue hardship is determined to exist).

(b) Grant to the Borrower/Grantee. The Lender/Grantor hereby grants to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the Lender/Grantor an amount equal to the Grant Amount.

(c) Project Account. The Finance Authority shall establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the Finance Authority. The Borrower/Grantee hereby acknowledges and consents to the establishment and maintenance of the Project Account and pledges to the Lender/Grantor all its rights, title and interest in the Loan/Grant Amount including the Project Account, for the purpose of securing the Borrower/Grantee's obligations under this Agreement. The Loan/Grant Amount shall be disbursed as provided in Section 7.2 hereof.

(d) Constitutional and Statutory Debt Limitations. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Water Trust Board, the Finance Authority, the State or the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation.

Section 5.2 Application of Loan/Grant Amount. Following the determination by the Finance Authority that the Conditions to the disbursement of the Loan/Grant Amount have been satisfied, the Finance Authority shall:

(a) transfer from monies available for that purpose to pay the Expenses of the Lender/Grantor, as shown on the Term Sheet, the amount requested or disbursed from each fund being in the sole discretion of the Finance Authority; and

(b) make an entry in its accounts, and in particular in the Project Account, reflecting the proceeds of the Loan/Grant Amount requested from the State Board of Finance or made available for disbursement from the Water Project Fund to the Borrower/Grantee at its request, and as needed by it to acquire and complete the Project, as provided in Section 7.2 of this Agreement.

Section 5.3 Investment of Borrower/Grantee's Accounts. Money on deposit in the Borrower/Grantee's accounts created hereunder and held by the Finance Authority may be invested by the Finance Authority for the credit of the Water Project Fund.

## **ARTICLE VI**

### **LOAN PAYMENTS BY THE BORROWER/GRANTEE**

Section 6.1 Payment Obligations Limited to Pledged Revenues; Pledge of the Pledged Revenues. The Borrower/Grantee promises to make the Loan Payments and to pay the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided. The Borrower/Grantee does hereby pledge and grant a lien on and a security interest in and conveys, assigns and pledges unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to make the Loan Payments, and to pay the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided, subject to and subordinate to all other pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (except only that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the Lender/Grantor pursuant to the Act or the Colonias Infrastructure Act), and (ii) all other rights hereinafter granted, for securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Amount, Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided, provided, however that if the Borrower/Grantee, its successors or assigns, shall well and truly pay, or cause to be paid the Loan Amount at the time and in the manner contemplated by this Agreement, according to the true intent and meaning hereof, the Administrative Fees and all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment or provision for payment by the Borrower/Grantee, the provisions of this Agreement and the rights created thereby with respect to the Loan Amount shall terminate and the Lender/Grantor shall give a written release or such other confirmation as may be necessary to remove any encumbrances upon the Pledged Revenues; otherwise, such provisions of this Agreement shall remain in full force and effect.

The pledge of the Pledged Revenues, the security interest in and the lien thereon shall be effective upon the Closing Date. The Borrower/Grantee, the Finance Authority, and the Water Trust Board acknowledge and agree that the obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount, the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall be construed to pledge or to create a lien on or security interest in any class or source of Borrower/Grantee's moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee's moneys including the Pledged Revenues. In addition, the Pledged Revenues not required to meet the obligation of the Borrower/Grantee under this Agreement may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Water Project Fund. All Loan Payments made by the Borrower/Grantee to the Finance Authority to repay the Loan Amount and interest thereon, if any, shall be deposited into the Water Project Fund.

Section 6.3 Manner of Payment. The Loan Amount shall be payable by the Borrower/Grantee to the Lender/Grantor in annual installments of principal payable on June 1 beginning in the year 2016 and continuing through the year 2035 as set forth more fully in Exhibit "C" to this Agreement. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 of this Agreement. The obligation of the Borrower/Grantee to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Borrower/Grantee and the Finance Authority, any vendor or any other person, the Borrower/Grantee shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to make the Loan Payments and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

Section 6.5 No Penalty for Prepayment of the Loan Amount. The Loan Amount shall be pre-payable by the Borrower/Grantee at anytime, without penalty.

Section 6.6 Lender/Grantor's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount, Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided in this Agreement and upon written request from the Borrower/Grantee the Lender/Grantor agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Lender/Grantor no longer holds or maintains any lien or claim against the Pledged Revenues.

## **ARTICLE VII THE PROJECT**

### **Section 7.1 Agreement to Acquire, Complete and Maintain the Project.**

(a) The Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire, complete, operate and maintain the Project lawfully and efficiently. The Project shall be designed so as to incorporate the available technologies and operational design for water use efficiency. The plans and specifications shall be approved on behalf of the Finance Authority by the New Mexico Environment Department prior to the disbursement of any part of the Loan/Grant Amount for construction of the Project, and the Project shall be constructed and completed substantially in accordance with the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(b) As provided by NMSA 1978, § 72-4A-7(A)(1), as amended, of the Act, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, which shall in no event be less than twenty (20) years, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, located, completed, installed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other qualifying entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall be subject to approval by the Lender/Grantor and shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement.

Section 7.2 Accounting for Amounts Credited to the Project Account. So long as no Event of Default shall occur and provided that all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of the plans and specifications), upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Borrower/Grantee, and an Authorized Officer of the Fiscal Administrator, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the Borrower/Grantee that the amount of the disbursement request represents the progress of design, construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the Finance Authority shall, in its sole and absolute discretion: (1) submit a request for payment to the State Board of Finance for payment; and/or (2) disburse from the Water Project Fund, amounts which together are sufficient to pay the requisition in full. The Finance Authority shall make the appropriate entry in the Project Account reflecting the amount of the payment. The certification provided pursuant to this Section 7.2 in support of the requisition must be acceptable in form and substance to the Finance Authority and, at its request, the Water Trust Board. The Borrower/Grantee and the Fiscal Administrator shall provide such records or access to the Project as the Finance Authority, and, at its request, the Water Trust Board, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's and the Fiscal Administrator's requisition requests made hereunder.

Section 7.3 No Disbursement for Prior Expenditures Except upon Approval. No request for payment shall be made to the State Board of Finance, and no disbursement shall be made from the Water Project Fund, of the Loan/Grant Amount, or any portion thereof, without the approval of the Finance Authority and, at its request, the Water Trust Board, to reimburse any expenditure made prior to the Closing Date.

Section 7.4 Borrower/Grantee and Fiscal Administrator Reporting to Lender/Grantor. During the acquisition implementation, installation and construction of the Project, the Borrower/Grantee and the Fiscal Administrator shall provide the Lender/Grantor with a quarterly written report executed by an Authorized Officer of the Borrower/Grantee, and an Authorized Officer of the Fiscal Administrator, in the form attached as Exhibit "D" hereto or in another form reasonably acceptable to the Lender/Grantor, describing the status of the Project as of the report



date, uses of Loan/Grant funds during the quarterly period ending on the report date, and requests for distributions of Loan/Grant funds anticipated to occur during the quarterly period immediately following the report date. The first quarterly report shall be due on June 30, 2016, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. No reports shall be required after the report date next following final distribution of the Loan/Grant Funds, unless specifically required by the Finance Authority or the Water Trust Board. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, and (c) a description of the percentage of completion of the Project.

Section 7.5 Completion of Disbursement of Loan/Grant Funds. Upon the earlier of (1) the completion of the Project, or (2) the expenditure of the whole Loan/Grant Amount, an Authorized Officer of the Borrower/Grantee and an Authorized Officer of the Fiscal Administrator shall deliver a certificate to the Finance Authority substantially in the form of Exhibit "E" attached hereto, stating that, to their knowledge, either (1) the Project has been completed, or (2) that the portion of the Loan/Grant Amount needed to complete the Project has been disbursed in accordance with the terms of this Agreement. No portion of the Loan/Grant Amount shall be disbursed after the date which is three (3) years from the Closing Date, unless a later date is approved in writing by an Authorized Officer of the Finance Authority.

Section 7.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds; Termination of Pledge. (a) Upon the completion of the Project as signified by delivery of the completion certificate required by Section 7.5 hereof, the Finance Authority shall determine, by reference to the Project Account, whether any portion of the authorized Loan/Grant Amount remains unexpended and shall dispose of such unexpended proceeds in accordance with law; (b) In the event that a portion of the Loan/Grant Amount remains unexpended after the date which is three (3) years from the Closing Date, and no later date has been approved by an Authorized Officer of the Finance Authority, pursuant to Section 7.5 hereof, the Finance Authority shall dispose of such funds in accordance with law. Upon the occurrence of either event described in (a) or (b) above, the Finance Authority shall make the appropriate entry in the Project Account and, upon such entry, the pledge of the Loan/Grant Amount established in this Loan/Grant Agreement shall terminate.

## **ARTICLE VIII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS**

Section 8.1 Further Assurances and Corrective Instruments. The Lender/Grantor, the Borrower/Grantee and the Fiscal Administrator agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues and for carrying out the intention hereof.

Section 8.2 Representatives of Lender/Grantor or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Lender/Grantor, the Borrower/Grantee or the Fiscal Administrator is required, or the Borrower/Grantee, the Lender/Grantor or the Fiscal Administrator is required to take some action at the request of either of them, such approval or such request shall be given for the Lender/Grantor, for the Borrower/Grantee, or for the Fiscal Administrator, by an Authorized Officer of the Lender/Grantor, the Borrower/Grantee or the Fiscal Administrator, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 8.3 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

Section 8.4 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin; and

(b) Any contractor or subcontractor providing construction services in connection with the Project shall post a performance and payment bond in accordance with the requirements of NMSA 1978, § 13-4-18, as amended.

Section 8.5 Application of Act and Board Rules. The Lender/Grantor, the Borrower/Grantee and the Fiscal Administrator expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and Board Rules are incorporated into this Agreement by reference.

## **ARTICLE IX INSURANCE; NON-LIABILITY OF LENDER/GRANTOR**

Section 9.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State's risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended, shall and hereby agrees to name the Lender/Grantor as an additional insured with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other qualifying entity to

perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement.

**Section 9.2    Non-Liability of Lender/Grantor.**

(a)    Lender/Grantor shall not be liable in any manner for the Project, Borrower/Grantee's use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Borrower/Grantee or any other owner or operator of the Project.

(b)    Lender/Grantor shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

(c)    From and to the extent of the Pledged Revenues, and to the extent permitted by law, the Borrower/Grantee shall and hereby agrees to indemnify and save the Finance Authority harmless against and from all claims, by or on behalf of any person, firm, corporation, or other legal entity, arising from the acquisition or operation of the Project during the Agreement Term, from: (i) any act of negligence or other misconduct of the Borrower/Grantee, or breach of any covenant or warranty by the Borrower/Grantee hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan/Grant Agreement proceeds and interest on the investment thereof. The Borrower/Grantee shall indemnify and save the Finance Authority harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority, shall defend the Finance Authority in any such action or proceeding.

**ARTICLE X  
EVENTS OF DEFAULT AND REMEDIES**

**Section 10.1    Events of Default Defined.** Any one of the following shall be an "Event of Default" under this Agreement:

(a)    Failure by the Borrower/Grantee to pay any amount required to be paid under this Agreement on the date on which it is due and payable; or

(b)    Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the Lender/Grantor unless the Lender/Grantor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure

stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Lender/Grantor but cannot be cured within the applicable thirty (30) day period, the Lender/Grantor will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 10.1(b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Borrower/Grantee contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is determined to be false or misleading in any material respect.

(d) A petition is filed against the Borrower/Grantee under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Borrower/Grantee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Borrower/Grantee admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Borrower/Grantee for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee shall be paid from only available Pledged Revenues unless the Borrower/Grantee in its sole discretion pays the judgment from other available funds.

Section 10.3 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.2 hereof, the Lender/Grantor may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Borrower/Grantee in this Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Borrower/Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;

- (b) Terminate this Agreement; or
- (c) Cease disbursing any further amounts from the Project Account; or
- (d) Demand that the Borrower/Grantee immediately repay the Loan/Grant Amount or any portion thereof if such funds were not utilized in accordance with this Agreement; or
- (e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Lender/Grantor; or
- (f) Intervene in judicial proceedings that affect this Agreement or the Pledged Revenues; or
- (g) Take whatever other action at law or in equity may appear necessary or desirable to enforce any other of its rights hereunder; or
- (h) The Borrower/Grantee shall be responsible for reimbursing the Lender/Grantor for any and all fees and costs incurred in enforcing the terms of this Agreement.

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lender/Grantor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Borrower/Grantee or the Lender/Grantor to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Lender/Grantor may, in its sole discretion, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Lender/Grantor in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Lender/Grantor, on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Lender/Grantor shall be restored to its former position and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Borrower/Grantee shall default under any of the provisions hereof, and the Finance Authority shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower/Grantee herein contained, the Borrower/Grantee agrees that it shall, on demand therefor, pay to the Finance Authority the fees of such attorneys and such other expenses so incurred, to the extent such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Borrower/Grantee under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## **ARTICLE XI MISCELLANEOUS**

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

City of Gallup  
Attn.: City Manager  
P.O. Box 1270  
Gallup, New Mexico 87305

If to the Finance Authority, then to:

New Mexico Finance Authority  
Attn.: Chief Executive Officer  
207 Shelby Street  
Santa Fe, New Mexico 87501

The Borrower/Grantee or the Lender/Grantor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lender/Grantor and the Borrower/Grantee and their respective successors and assigns, if any.

Section 11.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the Lender/Grantor and the Borrower/Grantee on the Closing Date constitute the entire agreement of the parties regarding the Loan/Grant and the funding of the Project through the Loan/Grant as of the Closing Date, and the terms of this Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Agreement.



Section 11.4 Amendments. This Agreement may be amended only with the written consent of both of the parties hereto. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by an Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Agreement.

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Lender/Grantor, either directly or through the Finance Authority, or against any officer, employee, director or member of the Borrower/Grantee, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Borrower/Grantee or of the Finance Authority is hereby expressly waived and released by the Borrower/Grantee and the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 11.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments and the Administrative Fee hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.7 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 11.9 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

*[Remainder of page intentionally left blank.]*

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, has executed this Agreement, which was approved by the Water Trust Board on June 3, 2015, and by the Finance Authority's Board of Directors on June 25, 2015, in its respective corporate name with its corporate seal affixed hereto and attested by their duly authorized officers; and the Borrower/Grantee has caused this Agreement to be executed and attested by duly authorized officers thereof. All of the above are effective as of the date first above written.

LENDER/GRANTOR:

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Chief Executive Officer or Designee

ATTEST:

By \_\_\_\_\_

Prepared for Execution by Officers of the  
New Mexico Finance Authority:

VIRTUE & NAJJAR, PC  
As Loan/Grant Counsel

By \_\_\_\_\_  
Jonas M. Nahoum

Approved for Execution by Officers of the  
New Mexico Finance Authority:

By \_\_\_\_\_  
Daniel C. Opperman  
Finance Authority General Counsel

BORROWER/GRANTEE:

CITY OF GALLUP,  
MCKINLEY COUNTY, NEW MEXICO

By \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

By \_\_\_\_\_  
Alfred Abeita II, City Clerk

FISCAL ADMINISTRATOR:

NORTHWEST NEW MEXICO COUNCIL OF  
GOVERNMENTS

By \_\_\_\_\_  
\_\_\_\_\_,  
Executive Director

ATTEST:

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name)  
(Title)

**EXHIBIT "A"**

**TERM SHEET**

**\$4,295,167 WATER PROJECT LOAN/GRANT TO THE  
CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO**

Project Description:	The Project is for storage, conveyance or delivery of water to end users as provided by law. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. In particular, the Project will consist of, planning, design, and construction of the Sacred Heart storage tank, a 1.5 MG water storage tank, 12" waterline, a new pump station, and the Red Rock Park storage tank, a 2.0 MG water tank, 16" and 12" waterline and a metering station and will connect to Reaches 14.1 and 14.2 delivering water to communities and shall include such other related work and revisions necessary to complete the Project. The Project may be further described in the Application and in the final plans and specifications for the Project approved by the Water Trust Board and the Finance Authority as provided by this Agreement. However, in the event of any inconsistency, the description of the Project as stated in this Term Sheet shall control.
Grant Amount:	\$2,577,100
Loan Amount:	\$1,718,067
Pledged Revenues:	"Pledged Revenues" means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount and Administrative Fees pursuant to the Ordinance and the Loan/Grant Agreement.
Outstanding Senior Obligations for Pledged Revenues:	2012 Utility Bonds, Mature 2025; NMED RIP Loan, Matures 2016.
Outstanding Parity Obligations:	0215-WTB, Matures 2033; 0247-WTB, Matures 2033; and 0283-WTB, Matures, 2035.
Authorizing Legislation:	Borrower/Grantee Ordinance No. S2016-1, adopted January 26, 2016.

Additional Funding Amount:	\$859,033
Closing Date:	March 4, 2016
Project Account Amount:	\$4,295,167
Expense Account Deposit:	\$0
Administrative Fee:	0.25%

Conditions to be satisfied prior to first disbursement of Loan/Grant funds: Delivery to Finance Authority of (i) a copy of the agenda of the meeting of the Governing Body at which the Ordinance was adopted and at which this Agreement, the Ordinance and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the City Clerk of the Borrower/Grantee, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the Mayor and attested to by the City Clerk of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant: Prior to disbursement of any portion of the Loan/Grant Amount, the Borrower/Grantee shall, if required, obtain and provide written documentation satisfactory to the Finance Authority of consent from the New Mexico Environment Department to incur additional indebtedness on the System of the Borrower/Grantee; and all Conditions defined in the Agreement.

**EXHIBIT "B"**

**FORM OF REQUISITION**

RE: \$4,295,167 Loan/Grant Agreement by and between the Finance Authority, as Lender/Grantor, and the City of Gallup as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. 334-WTB

Closing Date: March 4, 2016

TO: NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse from the Project Account –City of Gallup with regard to the above-referenced Loan/Grant Agreement the following:

REQUISITION NUMBER: \_\_\_\_\_

NAME AND ADDRESS OF PAYEE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

---

**WIRING INFORMATION**

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

---

AMOUNT OF PAYMENT: \$ \_\_\_\_\_

PURPOSE OF PAYMENT: \_\_\_\_\_

ELIGIBLE ITEM CATEGORY (See below): \_\_\_\_\_

City of Gallup, New Mexico

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer

Title: \_\_\_\_\_

Northwest New Mexico Council of Governments

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer

Title: \_\_\_\_\_

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the Lender/Grantor pursuant to the Water Project Finance Act to the Borrower/Grantee within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Project Account –City of Gallup. All representations contained in the Loan/Grant Agreement and the related closing documents remain true and correct and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant have been or will be used to pay the costs of Eligible Items, as defined in the Loan/Grant Agreement. Eligible Items are (1) matching requirements for federal and local cost shares, (2) engineering feasibility reports, (3) contracted engineering design, (4) inspection of construction, (5) special engineering services, (6) environmental or archeological surveys, (7) construction, (8) land acquisition, (9) easements and rights of way, (10) Eligible Legal Costs and (11) Eligible Fiscal Agent Fees, subject to limitations as set forth in the Loan/Grant Agreement.

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved on behalf of the Finance Authority the New Mexico Environment Department, has or will be acquired in compliance with applicable procurement laws and regulations and has or will be inspected and approved in accordance with applicable laws and regulations.

Capitalized terms used herein, are used as defined or used in the Loan/Grant Agreement.



**EXHIBIT "C"**

**PAYMENT PROVISIONS OF THE LOAN**

The Loan Amount shall be payable by the Borrower/Grantee to the Lender/Grantor in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2016 and ending June 1, 2035. The Loan Amount shall be prepayable at any time without penalty. The Administrative Fee shall be due and payable annually on June 1 of each year while the Loan, or any portion thereof, remains outstanding.



Goals/Milestones With Timeline or Dates For The Next Reporting Period:	
Name and Title of Authorized Officer – City Of Gallup, New Mexico: <i>(Print)</i>       Date: _____	Authorized Officer Signature:          
Name and Title of Authorized Officer – Northwest New Mexico Council of Governments: <i>(Print)</i>       Date: _____	Authorized Officer Signature:          

**EXHIBIT "E"**

**FORM OF CERTIFICATE OF COMPLETION**

RE: \$4,295,167 Loan/Grant Agreement by and between the Finance Authority, as Lender/Grantor, and the City of Gallup, as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. 334-WTB

Closing Date: March 4, 2016

TO: NEW MEXICO FINANCE AUTHORITY

I, \_\_\_\_\_, the \_\_\_\_\_ of the  
[Name] [Title or position]

Borrower/Grantee, hereby certify as follows:

1. The project described in the Loan/Grant Agreement (the "Project"), or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on \_\_\_\_\_, 20\_\_.

2. The total cost of the Project was \$ \_\_\_\_\_.

3. Cost of the Project paid from the Loan/Grant Amount was \$ \_\_\_\_\_.

4. Cost of the Project paid from the Additional Funding Amount was \$ \_\_\_\_\_.

5. The portion of the Loan/Grant Amount unexpended for the Project is \$ \_\_\_\_\_.

6. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Loan/Grant Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

CITY OF GALLUP,  
MCKINLEY COUNTY, NEW MEXICO

By: \_\_\_\_\_

Its: \_\_\_\_\_

NORTHWEST NEW MEXICO  
COUNCIL OF GOVERNMENTS

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **Discussion/Action Topic 2**

**Approval to Convert Existing Part-Time Judicial Aide to  
Full-Time Status at Municipal Court**

**Klo Abeita, Human Resources Director**



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: January 26, 2016

SUBJECT: Convert Existing Part-Time Judicial Aide to Full-Time Status  
DEPT. OF ORIGIN: Human Resources Department  
DATE SUBMITTED: January 20, 2016  
SUBMITTED BY: Kio Abeita, Human Resources Director

**Summary:** The workload for Municipal Court has significantly increased. With the change in administration, there have been new policies implemented for the collection of fees, fines and assessments. Additional staff hours are needed to fully address the new changes and the increase in case load. This will reflect a staffing change from 0.5 FTE to a full-time position (1.0 FTE) in Municipal Court. There is no overall increase in total number of FTE's.

**Fiscal Impact:**

Reviewed By: Charlotte Bicer  
Finance Department

The additional impact will be \$10,624.27 for the remainder of FY2016, (Mar 2016 – June 2016). Source of funds will be covered by the increase in revenues from the amount of court assessments in appropriate cases. Note: Salary plus benefits and employment taxes for Judicial Aide position per annum: \$30,692

**Attachments:**

- Court Filings for calendar years 2013, 2014, 2015
- Fine Fee Summary for calendar years 2013, 2014, 2015
- Fine Fee Summary Year-to-Date by FY15-16
- Revenue Forecast 2016
- Fiscal Impact calculations

**Legal Review:**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Staff recommends City Council approval to convert existing part-time Judicial Aide to full-time status for Municipal Court.

Approved for Submittal By:

[Signature]  
Department Director  
[Signature]  
City Manager

### CITY CLERK'S USE ONLY COUNCIL ACTION TAKEN

Resolution No. _____	Continued To: _____
Ordinance No. _____	Referred To: _____
Approved: _____	Denied: _____
Other: _____	File: _____



Filing By Statute  
All Case Types and Sub-Types  
From 01/01/2015 to 12/31/2015  
All Revisions; All Statutes  
All Ages  
All Reporting Types - Summary Only

**Summary****Case Type: CR**

1 1C/Dismissed by Judgefor some other reason  
610 1D/GuiltyPlea/Nolo Contendere  
1 1M/Dismissed-Valid Drivers Llcense and Valid Financial Responsibility  
2 3A/Found Not Guilty  
196 3B/Dismissed by Judge/City Attorney/Officer  
16 Dismissed Failure to Prosecute  
1 Dismissed by City  
1 Dismissed by Officer  
198 None

**1026 Total filings for case type CR****Case Type: DW**

10 1B/Dismissed six months rule  
129 1D/GuiltyPlea/Nolo Contendere  
188 3B/Dismissed by Judge/City Attorney/Officer  
3 3J/Conviction Non-Jury  
1 Dismissed Failure to Prosecute  
205 None

**536 Total filings for case type DW****Case Type: HS**

20 1D/GuiltyPlea/Nolo Contendere  
8 3B/Dismissed by Judge/City Attorney/Officer  
11 Dismissed Failure to Prosecute  
10 None

**49 Total filings for case type HS****Case Type: JV**

1 1C/Dismissed by Judgefor some other reason  
23 1D/GuiltyPlea/Nolo Contendere  
9 1M/Dismissed-Valid Drivers Llcense and Valid Financial Responsibility  
89 3B/Dismissed by Judge/City Attorney/Officer  
2 3I/Deferred-Guilty  
1 Dismissed transferred to Juvenile Court  
4 Guilty  
40 None

**169 Total filings for case type JV****Case Type: PK**

1 1C/Dismissed by Judgefor some other reason  
27 1D/GuiltyPlea/Nolo Contendere

Filing By Statute  
All Case Types and Sub-Types  
From 01/01/2015 to 12/31/2015  
All Revisions; All Statutes  
All Ages  
All Reporting Types - Summary Only

2015

**Summary****Case Type: PK**

8 3B/Dismissed by Judge/City Attorney/Officer  
1 Dismissed Failure to Prosecute  
3 Guilty  
1 None

**41****Total filings for case type PK****Case Type: TR**

23 1C/Dismissed by Judgefor some other reason  
1211 1D/GuiltyPlea/Nolo Contendere  
1 1H/Dismissed/pled guilty/deferred/complied  
197 1M/Dismissed-Valid Drivers License and Valid Financial Responsibility  
3 3A/Found Not Guilty  
342 3B/Dismissed by Judge/City Attorney/Officer  
18 3I/Deferred-Guilty  
1 3J/Conviction Non-Jury  
1 Dismissed  
74 Dismissed Failure to Prosecute  
41 Dismissed by Officer  
520 Guilty  
589 None  
4 Not Guilty

**3025****Total filings for case type TR****Case Type: WR**

85 None

**85****Total filings for case type WR****4931****Total Number of Filings**

## Filing By Statute

All Case Types and Sub-Types  
 From 01/01/2014 to 12/31/2014  
 All Revisions; All Statutes  
 All Ages  
 All Reporting Types - Summary Only  
 Total Only

**Summary****Case Type: CC**

- 1 3B/Dismissed by Judge/City Attorney/Officer
- 2 Dismissed Without Prejudice

**3 Total filings for case type CC****Case Type: CR**

- 3 1A/Dismissed-(before trial)When the city attorney or prosecuting officer do not wish to prosecute
- 6 1B/Dismissed six months rule
- 5 1C/Dismissed by Judgefor some other reason
- 304 1D/GuiltyPlea/Nolo Contendere
- 1 1H/Dismissed/pled guilty/deferred/complied
- 1 1P/Dismissed/Consolidated
- 5 3A/Found Not Guilty
- 303 3B/Dismissed by Judge/City Attorney/Officer
- 1 3D/Guilty defendant pleas guilty/no contest/given ant sentence other than a deferred sentence
- 8 3I/Deferred-Guilty
- 30 3J/Conviction Non-Jury
- 1 3L/Dismissed by Court/Witness FTA
- 242 Dismissed Failure to Prosecute
- 7 Dismissed Without Prejudice
- 177 None

**1094 Total filings for case type CR****Case Type: DW**

- 1 1A/Dismissed-(before trial)When the city attorney or prosecuting officer do not wish to prosecute
- 32 1B/Dismissed six months rule
- 1 1C/Dismissed by Judgefor some other reason
- 123 1D/GuiltyPlea/Nolo Contendere
- 1 3A/Found Not Guilty
- 284 3B/Dismissed by Judge/City Attorney/Officer
- 1 3C/Dismissed-Following a mistrial-city attorney dismisses or fails to retry
- 13 3J/Conviction Non-Jury
- 5 3L/Dismissed by Court/Witness FTA
- 11 Dismissed Failure to Prosecute
- 64 None

**536 Total filings for case type DW****Case Type: HS**

- 5 1D/GuiltyPlea/Nolo Contendere
- 6 Dismissed Failure to Prosecute

Filing By Statute  
All Case Types and Sub-Types  
From 01/01/2014 to 12/31/2014  
All Revisions; All Statutes  
All Ages  
All Reporting Types - Summary Only  
Total Only

**Summary**

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**Case Type: HS**

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3 None

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**14 Total filings for case type HS**

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**Case Type: JV**

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49 1D/GuiltyPlea/Nolo Contendere  
11 1M/Dismissed-Valid Drivers License and Valid Financial Responsibility  
25 3B/Dismissed by Judge/City Attorney/Officer  
16 3I/Deferred-Guilty  
1 Deferred Sentence  
7 Dismissed Failure to Prosecute  
3 Guilty  
6 None

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**118 Total filings for case type JV**

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**Case Type: PK**

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40 1D/GuiltyPlea/Nolo Contendere  
9 3B/Dismissed by Judge/City Attorney/Officer  
1 3I/Deferred-Guilty  
1 Dismissed by City

---

**51 Total filings for case type PK**

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**Case Type: TR**

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2 1B/Dismissed six months rule  
72 1C/Dismissed by Judgefor some other reason  
1142 1D/GuiltyPlea/Nolo Contendere  
2 1H/Dismissed/pled guilty/deferred/complied  
130 1M/Dismissed-Valid Drivers License and Valid Financial Responsibility  
5 3A/Found Not Guilty  
371 3B/Dismissed by Judge/City Attorney/Officer  
1 3H/Dismissed-convicted/pleads guilty to charge/Deferred/Complied  
114 3I/Deferred-Guilty  
7 3J/Conviction Non-Jury  
1 3L/Dismissed by Court/Witness FTA  
255 Dismissed Failure to Prosecute  
1 Dismissed Officer Error  
5 Dismissed Without Prejudice  
522 Guilty  
269 None

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**2899 Total filings for case type TR**

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Filing By Statute  
 All Case Types and Sub-Types  
 From 01/01/2014 to 12/31/2014  
 All Revisions; All Statutes  
 All Ages  
 All Reporting Types - Summary Only  
 Total Only

2014

**Summary**

**Case Type: WR**

1 1D/GuiltyPlea/Nolo Contendere  
 35 None  
 35 Warning Closed

71

**Total filings for case type WR**

4786

**Total Number of Filings**

## Filing By Statute

All Case Types and Sub-Types  
From 01/01/2013 to 12/31/2013  
All Revisions; All Statutes  
All Ages  
All Reporting Types - Summary Only  
Total Only

**Summary****Case Type: CR**

5 1A/Dismissed-(before trial)When the city attorney or prosecuting officer do not wish to prosecute  
4 1C/Dismissed by Judgefor some other reason  
123 1D/GuiltyPlea/Nolo Contendere  
8 3A/Found Not Guilty  
176 3B/Dismissed by Judge/City Attorney/Officer  
2 3H/Dismissed-convicted/pleads guilty to charge/Deferred/Complied  
2 3I/Deferred-Guilty  
37 3J/Conviction Non-Jury  
3 3L/Dismissed by Court/Witness FTA  
234 Dismissed Failure to Prosecute  
2 Dismissed With Prejudice  
12 Dismissed Without Prejudice  
69 None  
1 Not Guilty

**678****Total filings for case type CR****Case Type: DW**

1 1C/Dismissed by Judgefor some other reason  
68 1D/GuiltyPlea/Nolo Contendere  
1 1H/Dismissed/pled guilty/deferred/complied  
1 1P/Dismissed/Consolidated  
4 3A/Found Not Guilty  
111 3B/Dismissed by Judge/City Attorney/Officer  
23 3J/Conviction Non-Jury  
1 3L/Dismissed by Court/Witness FTA  
30 Dismissed Failure to Prosecute  
8 None

**248****Total filings for case type DW****Case Type: HS**

1 1A/Dismissed-(before trial)When the city attorney or prosecuting officer do not wish to prosecute  
5 1D/GuiltyPlea/Nolo Contendere  
2 3B/Dismissed by Judge/City Attorney/Officer  
2 3I/Deferred-Guilty  
4 3J/Conviction Non-Jury  
3 Dismissed Failure to Prosecute

**17****Total filings for case type HS****Case Type: JV**

4 1C/Dismissed by Judgefor some other reason

## Filing By Statute

All Case Types and Sub-Types  
 From 01/01/2013 to 12/31/2013  
 All Revisions; All Statutes  
 All Ages  
 All Reporting Types - Summary Only  
 Total Only

**Summary****Case Type: JV**

43 1D/GuiltyPlea/Nolo Contendere  
 1 1H/Dismissed/pled guilty/deferred/complied  
 6 1M/Dismissed-Valid Drivers License and Valid Financial Responsibility  
 7 3B/Dismissed by Judge/City Attorney/Officer  
 10 3H/Dismissed-convicted/pleads guilty to charge/Deferred/Complied  
 8 3I/Deferred-Guilty  
 1 3J/Conviction Non-Jury  
 3 Deferred - Guilty  
 6 Dismissed Failure to Prosecute  
 2 Dismissed Without Prejudice  
 8 None

99

**Total filings for case type JV****Case Type: PK**

5 1D/GuiltyPlea/Nolo Contendere  
 1 1M/Dismissed-Valid Drivers License and Valid Financial Responsibility  
 1 3B/Dismissed by Judge/City Attorney/Officer  
 1 3I/Deferred-Guilty  
 1 Guilty  
 1 None

10

**Total filings for case type PK****Case Type: TR**

40 1C/Dismissed by Judgefor some other reason  
 852 1D/GuiltyPlea/Nolo Contendere  
 9 1H/Dismissed/pled guilty/deferred/complied  
 2 1J/Guilty=Defendant makes a plea(before trial)/Deferred sentence/Fail to comply with conditions  
 143 1M/Dismissed-Valid Drivers License and Valid Financial Responsibility  
 2 3A/Found Not Guilty  
 178 3B/Dismissed by Judge/City Attorney/Officer  
 24 3H/Dismissed-convicted/pleads guilty to charge/Deferred/Complied  
 61 3I/Deferred-Guilty  
 19 3J/Conviction Non-Jury  
 6 3L/Dismissed by Court/Witness FTA  
 1 Deferred - Guilty  
 142 Dismissed Failure to Prosecute  
 3 Dismissed Without Prejudice  
 248 Guilty  
 153 None  
 1 Other

Gallup Municipal Court

User: mmart

Filing By Statute  
All Case Types and Sub-Types  
From 01/01/2013 to 12/31/2013  
All Revisions; All Statutes  
All Ages  
All Reporting Types - Summary Only  
Total Only

2013

Summary

Case Type: TR

1884 Total filings for case type TR

Case Type: WR

4 None  
27 Warning Closed

31 Total filings for case type WR

2967 Total Number of Filings



## Gallup Municipal Court

User: mmart

## Fine Fee Summary

From 01/01/2015 12:00 AM to 12/31/2015 11:30 PM  
All Case Types and Sub-Types  
All Clerks

2015

**Receipts****Bond Payment**

Criminal Bond	61,247.00
Juvenile Bond	98.00

Subtotal:	61,345.00
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**Case Payment**

Correction Fees	530.00
Correction Fees (CF)	39,707.00
Court Automation Fees	280.00
Court Automation Fees (CA)	11,990.00
DWI Lab Fee	35.00
DWI Lab Fee (LF)	2,877.00
DWI Prevention Fees	75.00
DWI Prevention Fees (PN)	2,132.00
Fine	1,046.00
Fine (FC)	82,080.00
Judicial Education Fees	47.00
Judicial Education Fees (JE)	5,933.00
Substance Abuse Lab Fee (SA)	225.00
Supervised Probation Fee (PF)	819.00
Traffic Enforcement & Education Fee (TE)	7,389.00

Subtotal:	155,165.00
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**Misc. Payment**

DWI Re-Registration Fee (DS)	2,400.00
DWI Registration Fee (DS)	42,450.00
Surety Bond License Fee	150.00

Subtotal:	45,000.00
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<b>Total Receipts:</b>	<b>261,510.00</b>
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**Transfers****Bond Conversion**

Correction Fees	10.00
Correction Fees (CF)	2,251.00
Court Automation Fees	6.00
Court Automation Fees (CA)	660.00
DWI Lab Fee (LF)	1,480.00
DWI Prevention Fees (PN)	1,300.00
Fine (FC)	11,463.00
Judicial Education Fees	1.00
Judicial Education Fees (JE)	325.00
Supervised Probation Fee (PF)	3,083.00
Traffic Enforcement & Education Fee (TE)	160.00

Subtotal:	20,739.00
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**Bond Forfeiture**

Criminal Bond	7,119.00
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Subtotal:	7,119.00
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<b>Total Transfers:</b>	<b>27,858.00</b>
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Fine Fee Summary

From 01/01/2015 12:00 AM to 12/31/2015 11:30 PM  
All Case Types and Sub-Types  
All Clerks

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**Report Total:**

**289,368.00**

**Gallup Municipal Court**

User: mmart

Fine Fee Summary  
From 01/01/2014 12:00 AM to 12/31/2014 11:30 PM  
All Case Types and Sub-Types  
All Clerks

2014

**Receipts**

**Bond Payment**

Criminal Bond	61,306.00
<b>Subtotal:</b>	<b>61,306.00</b>

**Case Payment**

Correction Fees	730.00
Correction Fees (CF)	32,097.00
Court Automation Fees	309.00
Court Automation Fees (CA)	9,638.00
DWI Lab Fee (LF)	1,603.00
DWI Prevention Fees (PN)	1,446.00
Fine	1,032.00
Fine (FC)	55,665.00
Judicial Education Fees	66.00
Judicial Education Fees (JE)	4,717.00
Substance Abuse Lab Fee (SA)	225.00
Traffic Enforcement & Education Fee	20.00
Traffic Enforcement & Education Fee (TE)	6,202.00
<b>Subtotal:</b>	<b>113,750.00</b>

**Misc. Payment**

DWI Re-Registration Fee (DS)	1,250.00
DWI Registration Fee (DS)	44,400.00
Surety Bond License Fee	200.00
<b>Subtotal:</b>	<b>45,850.00</b>

**Total Receipts: 220,906.00**

**Transfers**

**Bond Conversion**

Correction Fees (CF)	1,540.00
Court Automation Fees (CA)	462.00
DWI Lab Fee (LF)	1,425.00
DWI Prevention Fees (PN)	1,265.00
Fine (FC)	5,879.00
Judicial Education Fees (JE)	230.00
Substance Abuse Lab Fee (SA)	75.00
Traffic Enforcement & Education Fee (TE)	156.00
<b>Subtotal:</b>	<b>11,032.00</b>

**Bond Forfeiture**

Criminal Bond	3,683.00
<b>Subtotal:</b>	<b>3,683.00</b>

**Total Transfers: 14,715.00**

**Report Total: 235,621.00**

## Gallup Municipal Court

User: mmart

Fine Fee Summary  
From 01/01/2013 12:00 AM to 12/31/2013 11:39 PM  
All Case Types and Sub-Types  
All Clerks

2013

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**Receipts**

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**Bond Payment**

Criminal Bond	39,044.00
Juvenile Bond	48.00

Subtotal:	39,092.00
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**Case Payment**

Correction Fees	848.00
Correction Fees (CF)	28,055.00
Court Automation Fees	357.00
Court Automation Fees (CA)	8,385.00
DWI Lab Fee	70.00
DWI Lab Fee (LF)	2,183.00
DWI Prevention Fees	200.00
DWI Prevention Fees (PN)	1,612.00
Fine	1,074.00
Fine (FC)	46,151.00
Judicial Education Fees	76.00
Judicial Education Fees (JE)	4,104.00
Substance Abuse Lab Fee (SA)	100.00
Traffic Enforcement & Education Fee	8.00
Traffic Enforcement & Education Fee (TE)	5,346.00

Subtotal:	98,569.00
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**Misc. Payment**

DWI Re-Registration Fee (DS)	2,700.00
DWI Registration Fee (DS)	41,500.00
Surety Bond License Fee	150.00

Subtotal:	44,350.00
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<b>Total Receipts:</b>	<b>182,011.00</b>
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**Transfers**

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**Bond Conversion**

Correction Fees (CF)	1,244.00
Court Automation Fees (CA)	376.00
DWI Lab Fee (LF)	1,170.00
DWI Prevention Fees (PN)	1,050.00
Fine (FC)	4,175.00
Judicial Education Fees (JE)	186.00
Substance Abuse Lab Fee (SA)	270.00
Traffic Enforcement & Education Fee (TE)	108.00

Subtotal:	8,579.00
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**Bond Forfeiture**

Criminal Bond	4,500.00
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Subtotal:	4,500.00
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<b>Total Transfers:</b>	<b>13,079.00</b>
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<b>Report Total:</b>	<b>195,090.00</b>
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## Gallup Municipal Court

User: mmart

## Fine Fee Summary

From 07/01/2015 12:00 AM to 01/20/2016 11:30 PM  
All Case Types and Sub-Types  
All Clerks

FY  
2015/To date

**Receipts****Bond Payment**

Criminal Bond

29,383.00

Subtotal: 29,383.00

**Case Payment**

Correction Fees

400.00

Correction Fees (CF)

26,905.00

Court Automation Fees

211.00

Court Automation Fees (CA)

8,036.00

DWI Lab Fee (LF)

1,901.00

DWI Prevention Fees (PN)

1,560.00

Fine

720.00

Fine (FC)

59,126.00

Judicial Education Fees

37.00

Judicial Education Fees (JE)

4,007.00

Substance Abuse Lab Fee (SA)

150.00

Supervised Probation Fee (PF)

1,205.00

Traffic Enforcement &amp; Education Fee

12.00

Traffic Enforcement &amp; Education Fee (TE)

4,975.00

Subtotal: 109,245.00

**Misc. Payment**

DWI Re-Registration Fee (DS)

1,250.00

DWI Registration Fee (DS)

22,650.00

Surety Bond License Fee

150.00

Subtotal: 24,050.00

**Total Receipts: 162,678.00****Transfers****Bond Conversion**

Correction Fees (CF)

1,216.00

Court Automation Fees (CA)

366.00

DWI Lab Fee (LF)

1,176.00

DWI Prevention Fees (PN)

925.00

Fine (FC)

7,552.00

Judicial Education Fees (JE)

180.00

Substance Abuse Lab Fee (SA)

75.00

Supervised Probation Fee (PF)

2,564.00

Traffic Enforcement &amp; Education Fee (TE)

88.00

Subtotal: 14,142.00

**Bond Forfeiture**

Criminal Bond

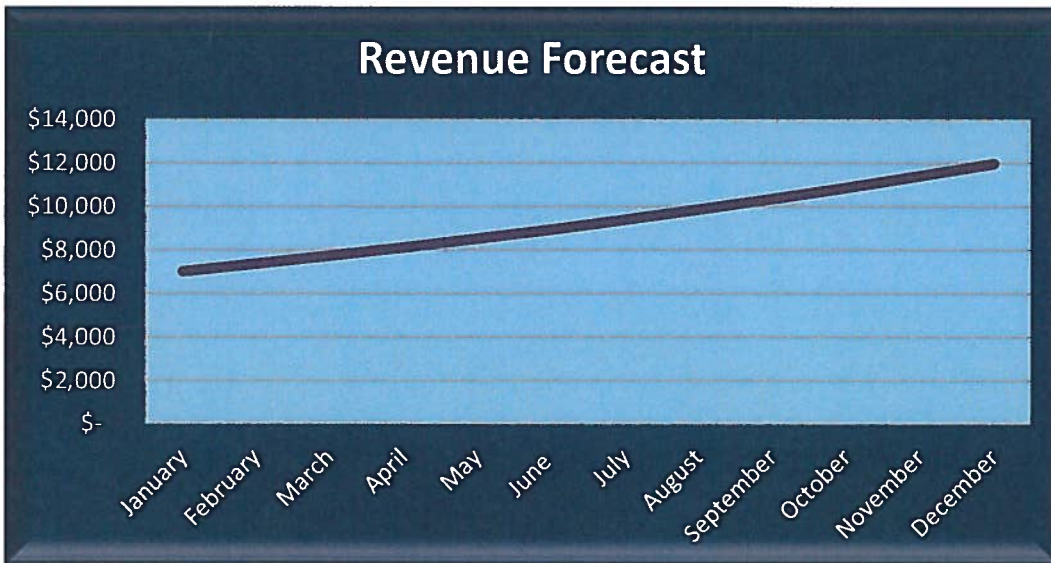
2,769.00

Subtotal: 2,769.00

**Total Transfers: 16,911.00****Report Total: 179,589.00**

**City of Gallup Municipal Court  
Revenue Forecast 2016**

Month	Revenue Forecast	Percent Growth
January	\$ 7,000	
February	\$ 7,350	5%
March	\$ 7,718	5%
April	\$ 8,103	5%
May	\$ 8,509	5%
June	\$ 8,934	5%
July	\$ 9,381	5%
August	\$ 9,850	5%
September	\$ 10,342	5%
October	\$ 10,859	5%
November	\$ 11,402	5%
December	\$ 11,972	5%



**Judicial Aide Position**  
**Municipal Court Department 101-4553-412.41-20**  
**Part-time to Full-time**

FICA, PERA, INSURANCE,

0.4368

Fiscal Impact Pro-Rated for FY16				
MONTH	HOURS			
Mar	200			
April	160			
May	160			
June	200			
Total Hours	720	x	\$10.27 hourly	\$ 7,394.40
			FICA, PERA, Ins, Other (43.68%)	\$ 3,229.87
			Total FY16 Impact pro-rata	\$ 10,624.27

1-20-16/HR/ka

### **Discussion/Action Topic 3**

**Approval of Intergovernmental Project Participation Agreement  
and Security Agreement with the New Mexico Economic  
Development Department for El Morro Theater**

**Rick Snider, General Services Director**





**CITY OF  
GALLUP**

**COUNCIL STAFF SUMMARY FORM**

**MEETING DATE:** January 26, 2016

**SUBJECT:** Intergovernmental Project Participation Agreement between The New Mexico Economic Development Department and the City of Gallup approval of a Security Agreement.

**DEPT. OF ORIGIN:** City Attorney

**DATE SUBMITTED:** January 19, 2016

**SUBMITTED BY:** George W. Kozeliski, City Attorney

**Summary:** This is a \$100,000 grant from NMEDD for the historic El Morro Theater

**Fiscal Impact:** \$100,000 to City

Reviewed By: \_\_\_\_\_

*Patty Holland*  
Finance Department

**Attachments:** Participation Agreement and Security Agreement

**Legal Review:** City Attorney negotiated language with NMEDD Attorney

Approved As To Form: \_\_\_\_\_

*G. W. Kozeliski*  
City Attorney

**Recommendation:** Approval of Participation Agreement & Security Agreement

Approved for Submittal By: \_\_\_\_\_

*G. W. Kozeliski*  
Department Director

*George W. Kozeliski*  
City Manager

**CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN**

Resolution No. \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Approved: \_\_\_\_\_

Other: \_\_\_\_\_

Continued To: \_\_\_\_\_

Referred To: \_\_\_\_\_

Denied: \_\_\_\_\_

File: \_\_\_\_\_

**INTERGOVERNMENTAL PROJECT PARTICIPATION AGREEMENT  
BETWEEN  
THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT  
AND  
THE CITY OF GALLUP, NEW MEXICO**

This Intergovernmental Project Participation Agreement (“Agreement”) is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department (“EDD”) and the City of Gallup (“City”), a New Mexico municipal corporation, collectively referred to as “the Parties,” with reference to the following facts.

**SECTION 1: RECITALS:**

**WHEREAS**, the New Mexico State Legislature enacted Laws 2015 (1<sup>st</sup> Special Session), Chapter 3, Section 70, which appropriated four hundred thousand dollars (\$400,000) to EDD “[f]or economic development projects statewide pursuant to the Local Economic Development Act” (the “Appropriation”); and

**WHEREAS**, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1 through 5-10-13 (2007) (“LEDA”), is to provide “public support for economic development to foster, promote and enhance local economic development efforts...;” and

**WHEREAS**, pursuant to the Local Economic Development Act, NMSA 1978, §§ 5-10-1 through 5-10-13, (“LEDA”), the City has adopted LEDA by Ordinance No. S2015-3, which established the City’s Economic Development Plan that promotes economic development within the City; and

**WHEREAS**, pursuant to LEDA, the City adopted Ordinance No. S2015-3 approved the establishment of an arts and cultural district and for projects such as improvements to cultural facilities such as theaters, museums, cultural compounds, and performing arts venues, including the City owned El Morro Theater; and

**WHEREAS**, the City has, and will, provide a substantive contribution in exchange for the public contribution made by EDD in support of the project; and

**WHEREAS**, EDD and the City desire to enter into this Agreement to facilitate disbursement of funds for the Project;

**NOW THEREFORE**, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

## **SECTION 2. PURPOSE OF AGREEMENT:**

The purpose of this Agreement is to place the primary responsibility on the City for overseeing and administering the portion of the Appropriation granted by EDD to the Project. It is the intent of the Parties that EDD will transfer an amount not to exceed one hundred thousand dollars (\$100,000) from the Appropriation to the City for expenditures made to implement the Project. The Parties agree that any and all State funds received will be accounted for by City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

### **SECTION 3. SCOPE OF WORK:**

The City will act as fiscal agent for the appropriation supporting the Project. EDD will transfer an amount not to exceed one hundred thousand dollars (\$100,000) from the Appropriation to the City for expenditures made to implement the Project, pursuant to Section 5-10-3(D) of LEDA. In exchange, the City will create a minimum of two part-time jobs at the El Morro Theater within the first year of operation and will begin regular operation immediately. EDD and the City will review the project timeline and progress annually until the three-year anniversary of this Agreement or until the City certifies to EDD that the requisite substantive contribution has been provided.

EDD and the City agree that the City's failure to make the required contribution will result in a violation of the terms and conditions of this Agreement. Such violation, after any cure period granted, will require that EDD foreclose on the security interest provided by the City.

### **SECTION 4. CITY OF GALLUP RESPONSIBILITIES:**

The City shall:

1. Submit to EDD all documentation supporting expenditures made to implement the Project in a format acceptable to EDD;
2. Notify EDD in writing of any default within 10 days of the event of default;
3. Serve as Fiscal Agent for the funds transferred to it under this Agreement;
4. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties:
  - a. Account for receipts and disbursements of funds;

- b. Provide EDD with the required financial documentation pertaining to this disbursement;
  - c. Submit all required and reasonably requested documentation to EDD including the endorsed Ordinance approved by the City Council approving the LEDA Project and the Historic El Morro Theater as a qualifying entity for LEDA, a fully executed copy of the security interest, and copies of invoices and other documentation as required by EDD within the time required; and
- 5. Not impose any obligations on EDD with respect to the administration of this Project, other than the reimbursement of funds described in this Agreement; and
- 6. Monitor job creation at the Historic El Morro Theater and report the number of jobs created twice yearly to EDD for a period of three years following completion of the Project. Job reports shall include a copy of FORM-903 provided by the City to the New Mexico Department of Workforce Solutions.

## **SECTION 5. CITY CERTIFICATIONS:**

As Fiscal Agent, the City hereby assures and certifies that:

- 1. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of State funds;
- 2. It has the legal authority to receive and expend the funds;

3. It will enforce the provisions of Ordinance No. S2015-3 approving such projects;
4. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long term economic development benefits;
5. It will provide EDD all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and copies of all reports and documentation it receives from NMTP;
6. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined in Section 2 - Purpose of Agreement and Section 3 - Scope of Work stated above;
7. It will notify EDD of any default within 10 days of the event of default and consult with EDD regarding an opportunity to cure any default.
8. No member, officer, or employee of the City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City

shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

9. It has complied with Article IX, Section 14 of the New Mexico Constitution, known as the “anti-donation clause.”

#### **SECTION 6. EDD RESPONSIBILITIES:**

EDD shall:

1. Transfer an amount not to exceed one hundred thousand dollars (\$100,000) from the appropriation to the City to reimburse expenditures made to implement the Project; and
2. At its discretion, review and audit the Project if it is deemed to be necessary or desirable.

#### **SECTION 7. HISTORIC EL MORRO THEATER.**

Because the El Morro Theater is listed on the New Mexico Register of Cultural Properties, all renovations to the Theater must be approved by the Cultural Properties Review Committee. The City acknowledges and agrees that it will contact Pilar Cannizzaro at Historic Preservation Division of the Department of Cultural Affairs to arrange for the Committee to review any plans before construction begins. The City further acknowledges and agrees that it will not perform any work on the Theater that has not been approved by the Committee.

#### **SECTION 8. TERM OF AGREEMENT:**

This Agreement shall become effective on the date it is fully executed and shall terminate when the City documents that the required substantive contribution has been provided.

## **SECTION 9.     LIABILITY:**

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, et seq. The Parties may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the Party, as determined by the Party responsible for payment.

## **SECTION 10.       DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS:**

1.     Property purchased under this Agreement for the Project shall remain with the purchasing Party unless otherwise agreed upon.
2.     The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used, and such other records as EDD may require.
3.     If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the City, the City shall return said funds to EDD for disposition in accordance with law.

## **SECTION 11.     STRICT ACCOUNTABILITY:**

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New



Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

**SECTION 12. REPORTS:**

The City shall submit bi-annual reports in May and November of each year during the life of this Agreement to EDD respecting direct and indirect job creation and retention attributable to the Appropriation and a Final Report EDD on or before the termination of this Agreement. The Final Report shall contain a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by EDD.

**SECTION 13. NOTICES; REPRESENTATIVES OF THE PARTIES:**

Any notice required to be given to a Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The Parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Juan Torres  
Finance Development Team Leader  
New Mexico Economic Development Department  
P.O. Box 20003  
Santa Fe, New Mexico 87504-5003  
juan.torres@state.nm.us

To the City:

City Manager, City of Gallup  
P.O. Box 1270  
Gallup, New Mexico 87305-1270  
manager@gallupnm.gov

**SECTION 14. AMENDMENTS:**

This Agreement shall not be altered, changed, or amended, except by instrument in writing executed by all of the Parties hereto.

**SECTION 15. GOVERNING LAW:**

This Agreement shall be governed by the laws of the State of New Mexico.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the last date of signature below.

**CITY OF GALLUP, NEW MEXICO**

By: \_\_\_\_\_  
Jackie McKinney, Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Alfred Abeita II, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
George W. Kozeliski, City Attorney

**ECONOMIC DEVELOPMENT DEPARTMENT**

By: \_\_\_\_\_  
Jon Barela, Cabinet Secretary

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Wade Jackson

Its: General Counsel, certifying legal sufficiency

## SECURITY AGREEMENT

This Security Agreement is entered into this 26th day of January, 2016, by City of Gallup, a New Mexico municipal corporation ("CITY"). As an inducement to the New Mexico Economic Development Department to provide public support to El Morro Theatre Phase 1, CITY hereby grants to New Mexico Economic Development Department ("NMEDD") a Security Interest in the El Morro Theatre building, land, and equipment ("COLLATERAL") in the amount of One hundred Thousand and 00/100 dollars (\$100,000)

City of Gallup further agrees as follows:

1. This Security Agreement secures any debt CITY may incur in the future to NMEDD pursuant to Sections 2,3 and 6 of the Project Participation Agreement by virtue of CITY'S failure to provide the substantive contribution required by Section 2 of the Project Participation Agreement, and will continue in effect until discharged in writing by NMEDD.
2. CITY owns COLLATERAL secured by this Security Agreement and has not given or offered any interest in them to any other party. CITY will not sell, transfer, or otherwise encumber its interest in COLLATERAL without first obtaining written consent of NMEDD.
3. That, in the event that CITY fails to provide the substantive contribution required by Section 4 of the Project Participation Agreement, thereby incurring an obligation to NMEDD, NMEDD shall have the following rights with respect to this agreement:
  - a. NMEDD may demand, collect, endorse, receive and give a receipt for, compromise, settle and handle suits or other proceedings involving the COLLATERAL in CITY'S name.
  - b. NMEDD may take any action it feels is necessary in order to take possession of the COLLATERAL, including performing any part of a contract or endorsing it in CITY'S name.
  - c. NMEDD may take action or pay money, on CITY'S behalf, to preserve or protect the COLLATERAL. NMEDD may treat such payments made or the reasonable value of services performed as advances to be added to the principal amount due from CITY and secured by this Security Agreement.

4. This Security Agreement shall be governed by the law of New Mexico. CITY agrees that any and all costs incurred by NMEDD in enforcing this agreement, including reasonable attorney's fees, shall be treated as an advance and shall constitute additional indebtedness secured by this Security Agreement.

CITY OF GALLUP, NEW MEXICO

Attest: \_\_\_\_\_  
Alfred Abeita II, City Clerk

[illegible]

Notary Public

My Commission Expires: \_\_\_\_\_

## **Discussion/Action Topic 4**

Resolution No. R2016-10;

Authorizing the Investment Grade Energy Audit and  
Project Proposal Agreement Between  
Energy Control, Inc./Opterra Energy Services and the City of Gallup

Richard Matzke, Director, Gallup Electric Department



**CITY OF  
GALLUP**

**COUNCIL STAFF SUMMARY FORM**

**MEETING DATE:** January 26, 2016

**SUBJECT:** Approval of Resolution 2016-10 Authorizing the Investment Grade Energy Audit and Project Proposal Agreement between Energy Control, Inc./Opterra Energy Services and the City of Gallup

**DEPT. OF ORIGIN:** Electric

**DATE SUBMITTED:** January 21, 2016

**SUBMITTED BY:** Richard Matzke

**Summary:** Energy Controls Inc. (ECI) was selected through the NWNM Council of Governments RFP and has submitted a proposal to the City of Gallup using the New Mexico Statewide Pricing Agreement for Qualified Providers of Energy Performance Contracting Services. Under this proposed agreement, ECI will provide an investment grade energy audit of City facilities including approximately 399,000 square feet. Also included will be water and wastewater facilities, sport field lighting, and street lighting. ECI will furnish an Investment Grade Energy Audit Report that will include proposed energy savings measures, project cost, and expected savings. ECI will then follow up with a project proposal to implement some or all of the identified energy savings measures. The City is not obligated under this agreement to proceed with implementation of any measure, but if the City does enter into a Guaranteed Utility Savings Contract with ECI, then the cost of the Investment Grade Energy Audit will be incorporated into that contract and paid through the Guaranteed Utility Savings Contract funding mechanisms.

**Fiscal Impact:**

*Reviewed By:*

*Patty Holland*  
Finance Department

The total cost of the Investment Grade Energy Audit is \$76,901.88 including \$5,901.88 Gross Receipts Tax. The cost of the audit will be paid from Fund 202 (Environmental Surcharge Special Revenue Fund)

**Attachments:** Resolution 2016-10 and INVESTMENT GRADE ENERGY AUDIT AND PROJECT PROPOSAL AGREEMENT.

**Legal Review:**

*Approved As To Form:*

*[Signature]*  
City Attorney

**Recommendation:** A preliminary analysis of these facilities performed by staff and ECI project energy savings of 30% of the City's total energy bill or approximately \$300,000 annually and \$50,000 annual savings in maintenance costs. ECI made presentations to the Sustainable Gallup Board (SGB) at the January and September 2015 meetings. The SGB endorsed the project during both meetings. Staff recommends approval of Resolution 2016-10 Authorizing the Investment Grade Energy Audit and Project Proposal Agreement between Energy Control, Inc./Opterra Energy Services and the City of Gallup.

*Approved for Submittal By:*

*[Signature]*  
Department Director

*[Signature]*  
City Manager

**CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN**

Resolution No. \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Approved: \_\_\_\_\_

Other: \_\_\_\_\_

Continued To: \_\_\_\_\_

Referred To: \_\_\_\_\_

Denied: \_\_\_\_\_

File: \_\_\_\_\_

## INVESTMENT-GRADE ENERGY AUDIT AND PROJECT PROPOSAL

THIS AGREEMENT is made and entered into by and between Energy Control, Inc. / Opterra Energy Services, hereinafter referred to as "ECI," and City of Gallup, hereinafter referred to as "City of Gallup," and is effective as of the date set forth below.

### RECITALS

WHEREAS, this Agreement was created for use by New Mexico government entities to obtain an Investment-Grade Energy Audit of a facility from a private energy service company (ECI);

WHEREAS, authority exists in the law for City of Gallup to enter into this contract, and funds have been budgeted, appropriated and otherwise made available; a sufficient unencumbered balance thereof remains available for payment; and the required approval, clearance and coordination have been accomplished from and with appropriate agencies;

WHEREAS, ECI is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at facilities similar in size, function and system type to City of Gallup's facilities;

WHEREAS, ECI has been selected through the NWNM Council of Governments RFP and has submitted a proposal to City of Gallup using the New Mexico Statewide Pricing Agreement #15-000-14-057959AF for Qualified Providers of Energy Performance Contracting Services (ESCO) pertaining to the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water conserving measures at City of Gallup's facilities and infrastructure;

WHEREAS, City of Gallup has selected ECI to provide the services described herein;

WHEREAS, City of Gallup desires to enter into a contract to have ECI perform an Investment-Grade Energy Audit and Project Proposal to determine the feasibility of entering into an Guaranteed Utility Savings Contract to provide for installation and implementation of energy and water conserving measures at City of Gallup's facilities; and

WHEREAS, if energy and water conserving measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover all costs, as defined by City of Gallup, associated with an Energy Savings Performance Contracting project, the parties intend to negotiate an Guaranteed Utility Savings Contract under which the ECI will design, procure, install, implement, maintain and monitor such energy and water conserving measures. However, this intent does not commit City of Gallup to entering into such a Guaranteed Utility Savings Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, City of Gallup and ECI hereto covenant and agree that the following Exhibits are attached hereto (or will be, as provided in this Agreement) and are made a part of this Agreement by reference.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

ECI shall:

- A. Perform an Investment-Grade Energy Audit (Audit) in accordance with this Agreement. ECI shall work diligently to assess validity of information provided and to confirm or correct the information as needed to provide a complete and accurate Audit. City of Gallup will assist ECI in performing the Audit as described in this Agreement. City of Gallup will work diligently to provide full and accurate information needed by ECI for the Audit. The parties contemplate that development of the Audit will be an iterative process and that City of Gallup will have a reasonable amount of time, not less than 30 calendar days but not exceeding 90 calendar days from City of Gallup receipt of Audit report, to review and determine acceptance of Audit report before considering issuance of the Notice of Acceptance (Exhibit A).
- B. Submit a Project Proposal (Proposal) to City of Gallup within 30 calendar days of Audit report submittal that provides a package of energy and water conserving measures, including details as specified in this Agreement.
- C. In order to successfully implement this project, ECI shall:
  - I. **Conduct assessment.**
    - (a) Meet with City of Gallup to establish interests, plans, problems, and any other issues related to facilities and operation of facilities.
    - (b) Collect data and background information on buildings, equipment and facilities operation and energy use for the most recent three years from the effective date of this Contract as follows:
      - (1) Building square footage;
      - (2) Construction data of buildings and major additions including building envelope;
      - (3) Utility company invoices;
      - (4) Occupancy and usage information;
      - (5) Description of all energy-consuming or energy-saving equipment used on the premises, as available;
      - (6) Description of energy management procedures utilized on the premises;
      - (7) Description of any energy-related improvements made or currently being implemented;
      - (8) Description of any changes in the structure of the facility or energy-using or water-using equipment;
      - (9) Description of future plans regarding building modifications or equipment modifications and replacements;
      - (10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels);
      - (11) Original construction submittals and factory data (specifications, pump curves, and any similar documentation), as available;
      - (12) Operating engineer logs, maintenance work orders, and any similar documentation, as available;
      - (13) Records of maintenance expenditures on energy-using equipment, including service contracts;
      - (14) Prior energy audits or studies, if any.
    - (c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures.



- (d) Meet with City of Gallup to present preliminary findings and establish agreement on measures to analyze.

## **II. Identify potential measures.**

- (a) Interview the facility manager, maintenance staff, subECIs and occupants of each building regarding:
  - (1) Facility operation, including energy management procedures;
  - (2) Equipment maintenance problems;
  - (3) Comfort problems and requirements;
  - (4) Equipment reliability;
  - (5) Projected equipment needs;
  - (6) Occupancy and use schedules for the facility and specific equipment;
  - (7) Past, planned, and desired facility improvements.
- (b) Survey major energy-using equipment, including indoor and outdoor lighting, heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment, exhaust systems and equipment, hot water systems, electric motors, transmission and drive systems, special systems (including kitchen/dining equipment), renewable energy systems, other energy using systems, and water consuming systems (restroom fixtures, water fountains, irrigation systems, and other water systems).
- (c) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.
- (d) Develop a preliminary list of potential energy and water conserving measures. Consider the following for each system:
  - (1) Comfort and maintenance problems;
  - (2) Energy use, loads, proper sizing, efficiencies and hours of operation;
  - (3) Current operating condition;
  - (4) Remaining useful life;
  - (5) Feasibility of system replacement;
  - (6) Hazardous materials and other environmental concerns;
  - (7) City of Gallup's future plans for equipment replacement or building renovations;
  - (8) Facility operation and maintenance procedures that could be affected;
  - (9) Capability to monitor energy performance and verify savings.

## **III. Analyze measures.**

- (a) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, and any other energy or fuel types. Present base year consumption in terms of energy units as used in utility bills, in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (such as averaging, selecting most representative contiguous 12 months, or other methods). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. ECI shall account for periods of time when equipment was broken or malfunctioning in calculating the base year.
- (b) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), ECI will use its best judgment, spot measurements or short-term monitoring. ECI should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

- (c) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable “real-world” limits on potential savings.
- (d) Propose adjustments to the baseline for energy and water conserving measures that will be implemented in the future. Adjustments made to the energy baseline shall only be made for any of the following changes in conditions affecting the facility:
  - (1) utility rates;
  - (2) number of days in the utility billing cycle;
  - (3) floor area of the facility;
  - (4) operational schedule of the facility;
  - (5) facility temperature;
  - (6) weather, if change is significant;
  - (7) amount of equipment or lighting used in the facility, if change is significant;
  - (8) space type(s) in the facility, if change is significant; and
  - (9) material change(s) in or to the facility.
- (e) Develop a preliminary analysis of potential energy and water conserving measures. This resulting list of measures shall be compiled and submitted to City of Gallup within 90 calendar days of the execution of this Contract. Furthermore:
  - (1) List all potential measures, whether cost-effective or not. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water conserving devices.
  - (2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis.
  - (3) For each measure, prepare a preliminary estimate of energy or water cost savings, including description of analysis methodology, supporting calculations and assumptions used to estimate savings.
- (f) Meet with City of Gallup to present preliminary findings prior to thorough analysis. Describe how the projected project economics meet the City of Gallup’s terms for completing the Investment-Grade Energy Audit and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The City of Gallup shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.
- (g) Perform final analysis of savings and costs for each energy and water conserving measure, including the following:
  - (1) Follow the methodology of American Society of Heating, Refrigerating, and Air-Conditioning Engineers or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option.
  - (2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
  - (3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
  - (4) Use markups and fees stated above in all cost estimates.
  - (5) Develop a preliminary measurement and verification plan for each measure.
  - (6) Follow additional guidelines for analysis and report preparation given below.

- (7) Include cost to provide services and complete application for Energy Star Label, LEED-EB certification for Existing Buildings, or other certification. Also include cost for EPA's Tools for Schools or other such program related to improved air quality.

#### **IV. Provide Investment-Grade Energy Audit Report**

The report provides an engineering and economic basis for negotiating a potential Guaranteed Utility Savings Contract between the City of Gallup and the ECI.

- (a) ECI shall prepare and submit to City of Gallup a draft Investment-Grade Energy Audit Report within 90 calendar days of the date of execution of this Contract. The report shall provide the following information:
- (1) Overview, which shall include:
    - i) Contact information;
    - ii) Summary table of recommended energy and water conserving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life;
    - iii) Summary of annual energy and water use by fuel type and costs of existing or base year condition;
    - iv) Calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility energy cost;
    - v) Description of the existing facility, mechanical and electrical systems;
    - vi) Summary description of measures, including estimated costs and savings for each as detailed above;
    - vii) Discussion of measures considered but not investigated in detail;
    - viii) Conclusions and recommendations.
  - (2) Base year energy use, which shall include:
    - i) Description and itemization of current billing rates, including schedules and riders;
    - ii) Summary of all utility bills for all fuel types and water;
    - iii) Identification and definition of base year consumption and description of how established;
    - iv) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings).
  - (3) Full written description of each energy and water conserving measure, which shall include:
    - i) Existing conditions;
    - ii) Description of equipment to be installed and how it will function;
    - iii) Discussion of facility operations and maintenance procedures that will be affected by installation/implementation;
    - iv) Plan for installing or implementing the recommended measure.
  - (4) Allowable cost and savings factors approved for consideration. City of Gallup will provide ECI with sufficient guidance to develop savings estimates, which shall include:
    - i) Payment sources that can be incorporated:
      - Energy and water cost savings;
      - Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable);
      - Outside labor cost savings, including maintenance contracts;
      - In-house labor costs;
      - Deferred maintenance cost;

- Offset of future capital cost;
  - Outside incentive funds (utility incentives, grants, etc.);
  - Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented;
- ii) Payment sources that may also be considered and negotiated;
- iii) Additional factors related to establishing savings that cover all costs:
- Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes; *NOTE: Use federal government guidelines on utility escalation rates to ensure reasonableness.*
  - Interest rates (municipal tax-exempt rates for public agencies);
  - City of Gallup cash outlay (City of Gallup's sole discretion);
- iv) The markup costs are presented in Exhibit B: Cost and Pricing. These rates will be used in the Investment-Grade Energy Audit and subsequent Guaranteed Utility Savings Contract.
- (5) Savings calculations
- i) Base year energy use and cost.
  - ii) Post-retrofit energy use and cost.
  - iii) Savings estimates including analysis methodology, supporting calculations and assumptions used.
  - iv) Annual savings estimates. The cost savings for all energy conserving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
  - v) Savings estimates must be limited to savings allowed by the City of Gallup as described above.
  - vi) Percent cost-avoidance projected.
  - vii) Description and calculations for any proposed rate changes.
  - viii) Explanation of how savings interactions between retrofit options are accounted for in calculations.
  - ix) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
  - x) If computer simulation is used, include a short description and state key input data. If requested by City of Gallup, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Investment-Grade Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts.
  - xi) If manual calculations are employed, formulas, assumptions and key data shall be stated.
  - xii) Conclusions, observations, and caveats.
- (6) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
- i) Engineering/design costs.
  - ii) ECI/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.

- iii) Permit costs.
- iv) Construction management fees.
- v) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.).
- vi) Note that all markups and fees stated in this Contract shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
- vii) Conclusions, observations, and caveats.
- viii) Other cost categories as defined above under “markups” in Section 3b above.

(7) Other

- i) Estimate of average useful service life of equipment.
  - ii) Preliminary commissioning plan.
  - iii) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.). The Preliminary M&V plan shall follow the format provided in Exhibit C: Guidelines for Draft Measurement and Verification Plan.
  - iv) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
  - v) Compatibility with existing systems. NOTE: Include the name of the existing controls system, if new controls systems will have to be compatible with an existing brand of controls. Also note if a sole-source vendor is established for controls systems.
  - vi) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.
- (b) ECI shall meet with City of Gallup to: review the recommendations, savings calculations and impact of the measures on the operations of the facility; describe how the projected project economics meet the City of Gallup’s terms for completing the Investment-Grade Energy Audit and Project Proposal; and discuss the willingness and capability of City of Gallup to make capital contributions to the project to improve the economics of the overall project.
- (c) ECI shall revise Audit Report as directed by City of Gallup and shall submit **final Investment-Grade Energy Audit Report** within 30 days of the above meeting.

**V. Provide Project Proposal (term sheet).**

- (a) In anticipation of ECI and City of Gallup entering into an Guaranteed Utility Savings Contract to design, install, and monitor the energy and water conserving measures proposed in the Investment-Grade Energy Audit Report, ECI shall prepare a proposal for terms to be incorporated in the Guaranteed Utility Savings Contract, which shall include:
- (1) Project Cost is the total amount City of Gallup will pay for the project and ECI’s services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Investment-Grade Energy Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.
  - (2) Include a List of Services that will be provided as related to each cost.
  - (3) Expected term of the Energy Performance Contract.

- (4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to City of Gallup at this time, and based on a 60-day and 90-day lock option.
- (5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol 2000.
- (6) Analysis of annual cash flow for City of Gallup during the contract term.
- (7) ECI agrees to meet with City of Gallup to present results and negotiate final terms.
- (8) Services will be performed at and/or about the locations described in Exhibit A.

**2. Compensation.**

- A. Except as provided for in subparagraphs 2D and 2E below, the City of Gallup shall pay to the ECI in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of **Seventy One Thousand and no/100 dollars (\$71,000.00)** in FY16. The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FY16 totaling **Five Thousand Nine Hundred One and 88/100 dollars (\$5,901.88)** shall be paid by the City of Gallup to the ECI. **The total amount payable to the ECI under this Agreement, including gross receipts tax and expenses, shall not exceed Seventy Six Thousand Nine Hundred One and 88/100 dollars (\$76,901.88) in FY16.**
- B. The total amount payable to the ECI under this Agreement, including gross receipts tax and expenses, shall not exceed Seventy Six Thousand Nine Hundred One and 88/100 dollars (\$76,901.88). This amount is a maximum and not a guarantee that the work assigned to the ECI under this Agreement to be performed shall equal the amount stated herein. This amount is based on a maximum of 399,045 gross square feet at seventeen.eight cents US dollars (\$0.178) per square foot of audited facility floor area, as per Exhibit B, Cost and Pricing. City of Gallup shall only pay for facility floor area actually audited. Areas not audited ECI will not be charged to City of Gallup.
- C. ECI must submit a detailed statement accounting for all services performed and expenses incurred. If the City of Gallup finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the ECI that payment is requested, it shall provide the ECI a letter of exception explaining the defect or objection to the services, and outlining steps the ECI may take to provide remedial action. Upon certification by the City of Gallup that the services have been received and accepted, payment shall be tendered to the ECI within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City of Gallup shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.
- D. City of Gallup shall have no payment obligations under this contract, provided that ECI and City of Gallup execute a Guaranteed Utility Savings Contract within 120 days [allows sufficient time for contract negotiation, attorney review, and City of Gallup processing days], after issuance of the Notice of Acceptance (Exhibit A) of the final Investment-Grade Energy Audit and Project Proposal, but the fee indicated above shall be incorporated into ECI's project costs in the Guaranteed Utility Savings Contract and paid through the Guaranteed Utility Savings Contract funding mechanisms.
- E. City of Gallup shall have no payment obligations under this Contract in the event that ECI's final Investment-Grade Energy Audit and Project Proposal does not contain a package of energy and water conservation measures which, if implemented and as meeting terms of Scope of Work, will provide the City of Gallup with utility cost savings sufficient to fund City of Gallup's payments of all costs and fees associated with the Guaranteed Utility Savings Contract, including: 1) the fee

associated with the Investment-Grade Energy Audit; 2) all monthly payments on a lease purchase agreement to finance the measures; and 3) any annual fees for monitoring and maintenance incurred by the ECI. Should the ECI determine at any time during the Investment-Grade Energy Audit that savings cannot be attained to meet these terms, the Investment-Grade Energy Audit will be terminated by written notice by ECI to City of Gallup. In this event, this Agreement shall be terminated and City of Gallup shall have no obligation to pay, in whole or in part, the amounts specified in subparagraphs 2A or 2B.

**3. Term.**

This Agreement shall terminate on **June 30, 2017** unless terminated pursuant to paragraph 4, *infra*, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978. An exception is that for contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23 NMSA 1978), the term shall not exceed twenty-five years, including all extensions and renewals.

**4. Termination.**

- A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ten (10) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the ECI if the ECI becomes unable to perform the services contracted for, as determined by the City of Gallup or if, during the term of this Agreement, the ECI or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE ECI'S DEFAULT/BREACH OF THIS AGREEMENT.*
- B. Termination Management. Immediately upon receipt by either the City of Gallup or the ECI of notice of termination of this Agreement, the ECI shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City of Gallup; 2) comply with all directives issued by the City of Gallup in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City of Gallup shall direct for the protection, preservation, retention or transfer of all property titled to the City of Gallup and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the ECI with contract funds shall become property of the City of Gallup upon termination and shall be submitted to the City of Gallup as soon as practicable.

**5. Performance Measures.**

ECI shall work with the City of Gallup to develop and specify "performance measures" that support the City's strategic plans and capital improvement plans during this Investment Grade Assessment substantially perform the following City of Gallup Performance Measures:

- A. *Reduce energy use and cost in city facilities by at least 15 percent compared to 2012 baselines by 2025.*
- B. *Reduce energy use and cost in City Water and Streetlight Utility Systems by at least 15 % over 2012 baselines by 2025.*

- C. *When replacing equipment and systems, use a life cycle cost benefit analysis to select higher efficiency products which save more operational funds (energy and maintenance) over the lifetime of the equipment than the incremental cost of the higher efficiency systems.*

City of Gallup Performance Measures documentation is provided as Exhibit D.

**6. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by City of Gallup for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the City of Gallup to the ECI. The City of Gallup's decision as to whether sufficient appropriations are available shall be accepted by the ECI and shall be final. If the City of Gallup proposes an amendment to the Agreement to unilaterally reduce funding, the ECI shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**7. Status of ECI.**

The ECI and its agents and employees are independent ECIs performing professional services for the City of Gallup and are not employees of the State of New Mexico. The ECI and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The ECI acknowledges that all sums received hereunder are reportable by the ECI for tax purposes, including without limitation, self-employment and business income tax. The ECI agrees not to purport to bind City of Gallup unless the ECI has express written authority to do so, and then only within the strict limits of that authority.

**8. Assignment.**

The ECI shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City of Gallup.

**9. Subcontracting.**

The ECI shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City of Gallup.

**10. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City of Gallup, its officers and employees, and City of Gallup from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**11. Confidentiality.**

Any confidential information provided to or developed by the ECI in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the ECI without the prior written approval of the City of Gallup.

**12. Product of Service -- Copyright.**

All materials developed or acquired by the ECI under this Agreement shall become the property of City of Gallup and shall be delivered to the City of Gallup no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the ECI under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the ECI.

**13. Conflict of Interest; Governmental Conduct Act.**



The ECI warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The ECI certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**14. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**15. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**16. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**17. Equal Opportunity Compliance.**

The ECI agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the ECI assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If ECI is found not to be in compliance with these requirements during the life of this Agreement, ECI agrees to take appropriate steps to correct these deficiencies.

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, ECI acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**19. Workers Compensation.**

The ECI agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the ECI fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City of Gallup.

**20. Records and Financial Audit.**

The ECI shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City of Gallup, the Department of Finance and Administration and the State Auditor. The City of Gallup

shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City of Gallup to recover excessive or illegal payments

**21. Indemnification.**

The ECI shall defend, indemnify and hold harmless the state of New Mexico and City of Gallup from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the ECI, its officers, employees, servants, subECIs or agents, or if caused by the actions of any client of the ECI resulting in injury or damage to persons or property during the time when the ECI or any officer, agent, employee, servant or subECI thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the ECI or any officer, agent, employee, servant or subECI under this Agreement is brought against the ECI, the ECI shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City of Gallup and the Risk Management Division of the New Mexico General Services Department by certified mail.

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City of Gallup:  
City of Gallup  
Attn: City Manager  
110 W Aztec Ave.  
Gallup, NM 87301

To the ECI:  
Energy Control, Inc.  
Attn: General Manager  
2600 American Road SE, Suite 360  
Rio Rancho, NM 87124

**1. Authority.**

If ECI is other than a natural person, the individual(s) signing this Agreement on behalf of ECI represent and warrant that he or she has the power and authority to bind ECI, and that no further action, resolution, or approval from ECI is necessary to enter into a binding contract. (I've encountered some situations where there was a question whether the person signing had authority; having the ECI assure the City of Gallup the person signing has authority creates an argument the City of Gallup has no obligation to check.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature below.**

By: \_\_\_\_\_  
Mayor, City of Gallup

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ECI

Date: \_\_\_\_\_

## Exhibit A

### List of Facilities

Facility	Size	Electric Cost	Gas Cost	Electric Use	Gas Use	Total Cost	%
City Hall	15,700	\$ 9,959	\$ 7,570	168,800	11,393	\$17,529	2%
El Morro	9,034	\$ 3,155	\$ 4,410	53,480	6,554	\$7,565	1%
Fit Ctr	15,200	\$ 10,280	\$ 5,788	174,240	8,729	\$16,068	1%
Senior Center	8,200	\$ 3,870	\$ 3,378	65,600	5,401	\$7,248	1%
Aquatics	45,125	\$ 70,092	\$ 43,062	1,188,000	70,568	\$113,154	10%
Library	9,094	\$ 7,768	\$ 3,086	131,660	4,679	\$10,854	1%
GJU	8,830	\$ 7,768	\$ 3,086	131,660	4,679	\$10,854	1%
Detox/NCI	26,500	\$ 12,461	\$ 12,517	211,200	18,965	\$24,978	2%
Library	18,338	\$ 10,903	\$ 2,215	184,800	3,356	\$13,118	1%
Red Rocks	62,727	\$ 54,068	\$ 22,468	916,408	34,043	\$76,536	7%
Corrections	51,678	\$ 12,461	\$ 11,313	211,200	18,966	\$23,774	2%
Neighbor Ctr	17,509	\$ 4,139	\$ 12,451	70,160	19,368	\$16,591	2%
FD #1	12,500	\$ 10,887	\$ 5,952	184,520	8,979	\$16,839	2%
FD Airport #5	2,800	\$ 835	\$ 1,696	14,158	1,995	\$2,531	0%
Fire Prevent	4,214	\$ 420	\$ 2,651	7,120	3,119	\$3,071	0%
FD #2	6,272	\$ 2,664	\$ 3,428	45,160	5,081	\$6,092	1%
FD #4	6,272	\$ 3,245	\$ 4,074	55,000	6,258	\$7,319	1%
FD #3	6,272	\$ 2,882	\$ 3,827	48,840	5,636	\$6,708	1%
FD #6 (old)	2,600	\$ -	\$ 2,673		4,166	\$2,673	0%
Shops	56,624	\$ 14,951	\$ 30,995	253,406	47,272	\$45,946	4%
Cultural Ctr	13,556	\$ 11,758	\$ 3,489	199,280	5,551	\$15,246	1%
Water Dept	-	\$ 345,995		5,817,775		\$345,995	32%
Streetlights	-	\$ 291,981		3,667,928		\$291,981	27%
<b>Totals</b>	<b>399,045</b>	<b>\$ 892,542</b>	<b>\$ 190,128</b>	<b>13,800,395</b>	<b>294,759</b>	<b>\$ 1,082,670</b>	<b>100%</b>

The scope will include the evaluation of

- sport field lighting systems
- airport terminal as well as the FD Airport#5 station, if heated
- review of system improvements/upgrade designs of water and wastewater facilities for energy efficiency potential
- Other areas that indicate potential for energy and operational savings that are identified by City and ECI personnel that are mutually acceptable for evaluation.



### **Program Schedule**

#### **Proposed Schedule**

Program Proposed Schedule City of Gallup		2016										2017						
		Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Investment Grade Assessment																		
Reviews																		
EPC Proposal																		
Financing																		
EPC Contract Signed																		
Construction																		
Commissioning																		
Construction M&V																		
Training																		
Acceptance																		
Persistence M&V																		

### **Exhibit C**

#### **Guidelines for Draft Measurement and Verification Plan**

ECI proposes to use the International Performance Measurement and Verification Protocol (IPMVP) Guidelines along with the State of New Mexico Model Documents for the Guaranteed Utility Savings Contract, specifically Schedules B and C, for the Draft Measurement and Verification Plan. The IPMVP provides an overview of current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects in commercial and industrial facilities. Energy conservation measures (ECMs) covered in the protocol include fuel saving measures, water efficiency measures, load shifting and energy reductions through installation or retrofit of equipment, and/or modification of operating procedures.

## **Exhibit D**

### **Performance Measures**

*(Performance Measures should be based on the Scope of Work and must be tied to the City of Gallup's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")*

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the City of Gallup's Strategic Plan:

**Example:**      Goal: Reduce or Increase or Other Service [insert blank].<sup>1</sup>

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.<sup>2</sup>

For example:

- a. *Reduce energy use and cost in city facilities by at least 15 percent compared to 2012 baselines by 2025.*
- b. *Reduce energy use and cost in City Water and Streetlight Utility Systems by at least 15 % over 2012 baselines by 2025.*
- c. *When replacing equipment and systems, use a life cycle cost benefit analysis to select higher efficiency products which save more operational funds (energy and maintenance) over the lifetime of the equipment than the incremental cost of the higher efficiency systems.*

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<sup>1</sup> A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

<sup>2</sup> An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

RESOLUTION NO. R2016-10

A RESOLUTION AUTHORIZING THE EXECUTION OF THE INVESTMENT GRADE ENERGY AUDIT AND PROJECT PROPOSAL AGREEMENT BETWEEN ENERGY CONTROL, INC. / OPTERRA ENERGY SERVICES AND THE CITY OF GALLUP

WHEREAS, the City of Gallup has created an Environmental Surcharge Fund; and

WHEREAS, Energy control, Inc. / Opterra Energy Services has submitted a proposal to the City of Gallup using the New Mexico Statewide Pricing agreement #15-000-14-057959AF for Qualified Providers of Energy Performance contracting Services; and

WHEREAS, the proposed INVESTMENT GRADE ENERGY AUDIT AND PROJECT PROPOSAL AGREEMENT may identify energy saving measures that could reduce the City's annual energy cost by 30%; and

WHEREAS, the investment Grade Energy Audit has been recommended by the Sustainable Gallup Board; and

WHEREAS, The City of Gallup has determined that the cost of the Investment Grade Energy Audit is an appropriate use of the Environmental Surcharge Fund;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NM THAT;

The City of Gallup, NM approves the INVESTMENT GRADE ENERGY AUDIT AND PROJECT PROPOSAL AGREEMENT BETWEEN ENERGY CONTROL, INC. / OPTERRA ENERGY SERVICES AND THE CITY OF GALLUP and authorizes the Mayor of Gallup to sign the agreement.

PASSED AND ADOPTED by the Gallup City Council this the 26<sup>th</sup> day of January 2016.

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Mayor

ATTEST:

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City Clerk



## **Discussion/Action Topic 5**

Fiscal Year 2016 Lodgers Tax Funding for Events

Patty Holland, Chief Financial Officer



## COUNCIL STAFF SUMMARY FORM

MEETING DATE: August 25, 2015

SUBJECT: FYE 2016 Lodgers Tax Event Funding  
DEPT. OF ORIGIN: Finance  
DATE SUBMITTED: August 20, 2015  
SUBMITTED BY: Patty Holland

**Summary:** Each year, the Lodgers Tax Committee recommends funding for the promotion of events to bring tourism to the City of Gallup. The funds are provided from the Lodgers Tax Funding collected and can be used for promotional purposes only.

The attached form lists the newest requests and the recommendation for funding.

**Fiscal Impact:**

Reviewed By: \_\_\_\_\_

*Patty Holland*  
Finance Department

There are sufficient funds in place for the recommended funding. This is to be paid from the Lodgers Tax Fund.

**Attachments:** Recommended Funding.

**Legal Review:**

Approved As To Form: \_\_\_\_\_

*[Signature]*  
City Attorney

**Recommendation:** Staff recommends approval of the recommended funding.

Approved for Submittal By: \_\_\_\_\_

*Patty Holland*  
Department Director

*[Signature]*  
City Manager

### CITY CLERK'S USE ONLY COUNCIL ACTION TAKEN

Resolution No. _____	Continued To: _____
Ordinance No. _____	Referred To: _____
Approved: _____	Denied: _____
Other: _____	File: _____

**FY 2016 Lodger's Tax Applicants**

1/21/2016

Project #	Organization Name	Event Name	Contact	FY 2015 Award	FY 2016 Request	FY 2016 Committee Recommendation	Council Approved	Check Number	Amount	Total Receipts Approved
	ZIA RIDES	24 HOURS IN THE ENCHANTED FOREST	SETH BUSH	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00				

APPLICATION FOR LODGERS' TAX FUNDS  
FOR PROJECTS, ACTIVITIES, AND EVENTS

PART I: CONTACT INFORMATION

Organization Name: Zia Rides Event Name: 24 Hours in the Enchanted Forest  
Event Date: June 18-19, 2016  
Organized By: Seth Bush Title: Director, Mountain Bike Southwest, LLC  
Address: PO Box 70188, ABQ NM 87197 Phone: 505-554-0059 Fax: \_\_\_\_\_  
Contact Person (if different than preparer): \_\_\_\_\_  
Contact Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Total Project Cost: \$25,280.73 Minimum Funding Requested: \$5000.00  
Other Funding Sources: registration, sponsors, merchandise  
Volunteer Community - In Kind Contributions: 75+ volunteers, YCC, McKinley County SAR, et  
Other anticipated sources for future development: state marketing grants

PART II: CRITERIA

Were you funded in Fiscal Year 2015? X If "YES" have you submitted a Financial Statement on the project?  
I do not know. I am the new owner of Zia Rides. This would be the responsibility of the previous owner who received the funds  
How much did you receive? \$3000.00  
Is this a new event? No Is your organization a non-profit? No Is this event off season? No  
How many people attend this event? 750+ What is the date(s) of the event? June 18-19, 2016

Note: Funding is for the event promotional costs only.

1. Define/ Describe the overall project:

A 24-hour mountain bike race that attracts riders of all abilities, their family members, and other supporters.

2. Describe the specific ways Lodgers' Tax funds will be used with the project/ activity/ event:

I need marketing funds to grow this event. This will include posters, postcards, Google ads, Facebook ads, website marketing, magazine ads, online publication ads, etc.

3. Describe how project meets 2015 - 2016 Lodgers' Tax Priorities and Guidelines: The event brings hundreds of tourists to shop, dine, and buy supplies in Gallup. It also brings tourists who learn about mountain biking in Gallup because of the race.

### PART III: LODGERS' TAX GOALS & PURPOSED

LODGER'S TAX FUNDS ARE ALLOCATED TO MEET THE PURPOSES AND GOALS OF THE CITY OF GALLUP, PLEASE CHECK ALL OF THE GOALS AND PURPOSE BELOW THAT YOUR ACTIVITY/ EVENT WILL ADDRESS.

The Lodgers' tax funds we have applied for will:

- ☒ Increase tourism
- ☒ Increase lodging use
- ☒ Increase and promote cooperation with other activities/ events
- ☒ Allow us to leverage funds and resources
- ☒ Promote a positive image for Gallup
- ☒ Promote a positive service culture in Gallup
- ☒ Increase our organization's capacity to develop resources and funds, and reduce future reliance Lodgers' tax funding
- ☒ Benefits the Gallup community in the following way (please list):

### PART IV: FINANCIAL DISCLOSURE CHECK LIST

As per the attached City Ordinance, all applicants for Lodgers' Tax funds must submit the following information:

- ☐ Complete Budget for Event/Special Activity/Project
- ☐ Complete Listing of all sources of funding for event
- ☐ Payroll information for sponsoring organization
- ☐ Beginning and ending cash balances for event
- ☐ IRS Form 990 for non-profit organization sponsoring event
- ☐ Agency's Financial Statement for last completed fiscal year

### PART V: ASSURANCES AND CERTIFICATIONS

I/ WE CERTIFY THAT I/ WE AM/ ARE AUTHORIZED TO ACT ON BEHALF OF THE ORGANIZATION MAKING THIS APPLICATION AND THAT THE STATEMENTS HEREIN ARE COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE. IF FUNDED, WE WILL KEEP A CLEAR AND ACCURATE ACCOUNTING OF HOW THE FUNDS WERE USED. WE WILL EVALUATE THE USE OF FUNDS AS REQUIRED AND APPROVED BY THE CITY OF GALLUP, AND WILL DELIVER AN ANNUAL EVALUATION REPORT TO THE CITY ON OR BEFORE THE DATE ESTABLISHED FOR SUBMITTAL.

Print your name:

Signature:

Title:

Date:

Seth R. Bush

[Signature]

Director

11/5/15

LODGERS' TAX FUNDS IS THURSDAY APRIL 16, 2015 AT 4 PM FOR.  
Return Applications to: Lodgers' Tax Committee  
City of Gallup  
C/o Patty Holland  
110 W. Aztec Ave  
P.O. Box 1270  
Gallup, NM 87305

- B. OBTAIN APPLICATION:** Applications can be obtained by contacting The City of Gallup, Finance Department, 110 West Aztec Avenue, Gallup, NM 87301, (505) 863-1362.
- C. ELIGIBILITY:** Any organization, which promotes travel and tourism for the benefit of the Gallup-McKinley County area and has an established organization and leadership, which can accomplish the proposed project and can comply with all applicable conditions. The application will be reviewed by the Lodgers' Tax Committee for recommendation for approval or disapproval by City Council. Decisions will be returned in writing to the applicant indicating approval or disapproval. Approved projects will receive funding amount, administrative guidelines and any special conditions of funding.
- D. CRITERIA FOR APPROVAL:** The following guidelines will be used to evaluate proposals: Tourism Promotion; Compatibility with Year-Round Calendar of Events; Innovativeness; Funding History; Marketing Effectiveness; Positive Image of Gallup; Project Business Plan; Past and Projected Results and Project Evaluation.
- E. 2015-2016 PRIORITIES AND GUIDELINES:**
1. **No single project or event will receive more than \$25,000**
    - a. A minimum of two (2) night's stay in Gallup shall be required for maximum event funding from Lodger's Tax.
    - b. Events or projects requiring one (1) night's stay in Gallup will receive not more than \$12,500 or 50% of maximum funding.
    - c. Events or projects requiring no overnight stay in Gallup shall receive no more than \$1,500
  2. **New and off-peak season events will have a priority for Lodgers' Tax Funds.**
    - a. Events scheduled between September 15, 2015 and May 31, 2016 will receive first priority for funding.
    - b. New events scheduled from the 2<sup>nd</sup> to the 4<sup>th</sup> weekends of the month when no other established event is scheduled will receive second priority for funding.
    - c. No new events scheduled for the first of the month will be eligible to receive funds.
  3. Funding for "for-profit" events be limited in funding to no more than \$5,000 per event
  4. Limited exception for specific types of community events: first, Native American Appreciation Day; and secondly, either the resumption of Heritage Day or the Festival of Cultures, and holding the spending limit to \$25,000 and proposing an exception to the requirement of two (2) night's stay to receiving the maximum funding.
- F. RESPONSIBILITIES:** All recipients of Lodgers' Tax funds are responsible for completing the proposed project within the approved time period and providing the Lodgers' Tax Committee with periodic progress updates. A final report with substantiating documentation of expenditures is required 15 days after event. Recipients are responsible for filing financial reports and timely evaluation reports. Upon completion of the project, each recipient of Lodges' Tax funds will submit to the Lodgers' Tax Committee proof of expenditures such as receipts for expenses, copies of ads, cancelled checks and other receipts. Financial statements are required from each project as stipulated in the attached Letter of Transmittal. Project status reports may be requested.
- All recipients of Lodgers' Tax funds must list the City of Gallup Lodger's Tax as a contributor on all advertisements, brochures and other mediated materials, with the City Lodgers' Tax logo.*
- G. EVALUATION:** An evaluation is required for each project or event receiving Lodgers' Tax Funds. The evaluation form is included in the attached materials. Evaluations must be returned to the Lodgers' Tax Committee within thirty days of the completion of the project or event.

Description	2016 Projected
<b>Advertising &amp; Design</b>	
Graphic Design	\$1,500.00
Video	\$1,000.00
Bike Magazine Ads	\$0.00
Dirt Rag Ads	\$0.00
Mountain Flyer Magazine Ads	\$0.00
Misc Advertising mtbr, Seattle Pubs	\$2,500.00
Gallup Journey Ad	\$500.00
Web Ads	\$1,000.00
Google Ads	\$0.00
Facebook Ads	\$500.00
Active Instant Ads	\$0.00
Drunk Cyclist Ads	\$0.00
Website	\$0.00
Poster Printing	\$1,000.00
Photographer	\$500.00
Misc	\$0.00
	<b>\$8,500.00</b>
<b>Giveaways</b>	
T-Shirts	\$2,000.00
Racer Meal	\$1,000.00
Swag	\$500.00
Sponsorship Brochure Printing	\$0.00
Registration Brochure Printing	\$0.00
Merchandise	\$1,000.00
Bibs	\$250.00
Goody Bag Printing	\$0.00
Race Guide	\$500.00
Misc Printing	\$1,000.00
	<b>\$6,250.00</b>
<b>Logistics &amp; Course</b>	
Timing	\$2,500.00
Barricading/stage/truss/truck to haul	\$500.00
Course Marking	\$200.00
Course Entertainment	\$800.00
Event Signage	\$0.00
SAR	\$1,000.00
Insurance	\$3,000.00
Porta Toilets & Tent & Tables	\$2,000.00
Waste Removal & Recycling	\$250.00
Truck Haul	\$0.00
Light	\$0.00
Decorations	\$0.00
Kids Activities	\$0.00
Adult Prizes	\$3,000.00
Fun Prizes	\$500.00
Other Entertainment	\$100.00
Massage	\$0.00
Beverages	\$100.00
Gas	\$100.00
Gas for generators	\$50.00
Water	\$0.00

Power & Lights	\$600.00
	<b>\$14,700.00</b>
<b>Administrative</b>	
Feeding Staff	\$1,000.00
Meeting Food	\$50.00
Sponsor Gifts	\$0.00
Postage & Mailing Supplies	\$0.00
Permit Fees	\$1,600.00
Event Supplies	\$0.00
Lodging	\$0.00
Coordinator Wages	\$2,500.00
Coordinator Gas Rimbusement	\$100.00
Registration Fees	\$0.00
Donation	\$500.00
Sponsorship Coord	\$0.00
USAC Official Fees	\$0.00
Nationals Fee	\$0.00
Announcer	\$500.00
Misc	\$0.00
	<b>\$6,250.00</b>
<b>Total Expenses</b>	<b>\$35,700.00</b>

<b>Revenue</b>	
Previous Year Balance	\$0.00
Grant Funding	\$0.00
Lodger's Tax	\$4,000.00
Sponsorships	\$4,000.00
Registration	\$40,000.00
T-Shirts & Swag	\$3,000.00
Camping	\$2,500.00
Meal	\$200.00
Misc	\$0.00
<b>Total Revenue</b>	<b>\$53,700.00</b>

<b>Total Profit</b>	<b><u>\$18,000.00</u></b>	<b><u>#REF!</u></b>	<b><u>#REF!</u></b>
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***Meeting Agenda***  
***City of Gallup – Lodgers Tax Committee***  
***Regular Quarterly Meeting***

December 1, 2015  
11:00 AM

City Hall, City Manager Conference Room

Type of Meeting: Quarterly

I. Call to order

II. Roll call

III. Approval of minutes from last meeting

IV. Discussion/Action Topics

- a) Election of committee chair person
- b) Event Application – review and recommendation

V. Presentation Item

- a) Presentation of Marketing Plan and Web Site Development – HK Advertising Marketing PR

VI. Adjournment

Lodger's Tax Committee Minutes  
City of Gallup  
December 1, 2015  
11:00 AM Council Chambers

Meeting was called to order at 11:06 AM by City of Gallup Chief Finance Officer Patricia Holland

Committee Members:

Present: Ron Samardzia, Cindy Tanner, Steve Harper, and Yogash Kumar

Absent: Frances Richardson

Others Present: CFO Patricia Holland, City Manager Maryann Ustick, Linette Kanteena, Charlotte Becenti, Chamber of Commerce CEO David Hinkle, Gallup Sun Reporter, and HK Advertising Representatives: David Hayduk and James Glover

There were no minutes from the last meeting for approval.

Patty Holland informed the committee that they need to elect a Chairperson. This person will not solely make the decisions but to officiate the meetings. She had them start off by introducing themselves.

Cindy Tanner introduced herself as being in the Indian Arts business for a long time and is a lifelong resident of Gallup.

Ron Samardzia is a new member of the committee and is the General Manager of the new Hilton Garden Inn. Has been living in Gallup for the past 2 years. Has also lived in Arkansas and Albuquerque. Went to school in Roswell.

Steven Harper has a business called the Stone Weaver. Has had the business for 42 years. He wants to promote sporting events.

Yogash Kumar is a hotel owner and developer. Wants tourism to explode.

**MOTION** by Yogash

Moved to nominate Cindy Tanner as Chairperson. Cindy accepted. All voted in favor.

Zia Rides' application for the 24 Hours in the Enchanted Forest event was on the table for review and recommendation. Zia Rides' request is for \$5000.00. The request was already submitted by Lindsay Mapes and was approved. Since then Lindsay sold the organization to Seth Bush. Therefore Seth had to reapply for funds. Yogash suggested that since the application was already approved when ownership was with Lindsay Mapes it should be approved.

**MOTION** by Cindy

Moved to approve Zia Rides' application for \$5000.00. Seconded by Steve Harper. All were in favor.

City Manager Maryann Ustick introduced the presenters for HK Advertising and David Hinkle of the Chamber of Commerce. The Chamber of Commerce and the City of Gallup will partner together to work on marketing and advertising strategies. Maryann also praised the Lodger's Tax committee for a great job.

Chamber of Commerce CEO David Hinkle informed the committee that marketing and advertising strategies will be introduced to the committee for their input.

David Hayduk CEO of HK Advertising and James Glover presented HK Advertising which has been in business for over 30 years. They work with economics and tourism; giving full services of advertising, public relations, graphic design and electronic communication to their clients. They help build the brand and educate the meaning of the brand. Their plan of work entails: research and positioning, market plan, website, video and imaging, and online marketing campaigns. To stay true to their commitments for advertising, they have a timeline schedule for a 6 months project plan.

Meeting adjourned at 11.48 a.m.

Minutes submitted by: Linette Kanteena, City of Gallup Finance Dept.

## **Discussion/Action Topic 6**

Resolution No. R2016-9;  
2<sup>nd</sup> Quarter Fiscal Year 2016 Budget Adjustments  
and Report of Actuals

Patty Holland, Chief Financial Officer



**CITY OF  
GALLUP**

**COUNCIL STAFF SUMMARY FORM**

**MEETING DATE:** January 26, 2016

**SUBJECT:** 2nd Quarter FY2016 Budget Adjustments and Report of Actuals

**DEPT. OF ORIGIN:** Finance

**DATE SUBMITTED:** January 21, 2016

**SUBMITTED BY:** Patty Holland

**Summary:** Each quarter, the Finance department reviews any changes to the budget and submits these changes to council for approval. The following areas are reviewed: personnel, operations, capital outlay and transfers in and out of each fund. The Department of Finance and Administration (DFA) requires Council to pass a resolution for all budget increases, decreases, and transfers between funds. DFA further requires approval of the report of actuals showing cumulative activity for the fiscal year. The report to DFA regarding budget revisions is due January 31, 2016. Further we have a mid year budget proposal for funding of items not included in the original FY 2016 budget.

This revision encompasses all budget changes processed October 1, 2015 through December 31, 2015 (Quarter 2 of FY2016).

**Fiscal Impact:**

Reviewed By: \_\_\_\_\_

*Patty Holland*  
Finance Department

Budget proposal requests 625,760 from GF reserves and an additional 312,482 from various funds. All funds have sufficient reserve balances.

**Attachments:** Budget Changes Q 2, FY 2016, Report of Actuals 12/31/15.

**Legal Review:**

Approved As To Form: \_\_\_\_\_

*[Signature]*  
City Attorney

**Recommendation:** Staff recommends approval of the budget adjustments and report of actuals.

Approved for Submittal By: \_\_\_\_\_

*Patty Holland*  
Department Director

*[Signature]*  
City Manager

**CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN**

Resolution No. _____	Continued To: _____
Ordinance No. _____	Referred To: _____
Approved: _____	Denied: _____
Other: _____	File: _____

Fund Dept.	Fund	Revenue	Transfer In	Expense	Transfer Out	Increase or (Decrease)	Purpose
<b>General Fund</b>							
101 0000	GF Revenue / Fire Fund	-	-	-	-	-	Budget Rev. & Ex for fire truck purchase / County will reimburse
101 0000	GF Revenue / Police Dept.	151,000	-	151,000	-	-	Adjust to close and budget JAG grants
101 0000	GF Revenue / YCC Dept.	21,590	-	21,590	-	-	Close YCC Grant for the season
101 0000	GF Revenue / LBM Dept.	(12,229)	-	(12,227)	-	2	Budget Rev. & Ex to accommodate GYBL activity in GF
101 0000	GF Transfer In	7,000	-	7,000	-	-	Transfer in from Risk Management to GF / cover safety incentive
101 0000	GF Transfer In	-	32,933	-	-	(32,933)	Budget wages for various departments / cover safety incentive
101 1015	Finance	-	-	32,970	-	32,970	Budget accounting & consulting expenses / roll from 2015 contract
101 1025	Non Departmental	-	-	53,235	-	53,235	Adult Detention adjustment for cost over run (County billing)
101 1054	Municipal Building	-	-	260,502	-	260,502	Transfer to General Services / cover lease for parking lot 4th & Aztec
101 1055	General Services	-	-	(4,250)	-	(4,250)	Transfer from Municipal Building / cover lease for parking lot 4th & Aztec
101 1055	Various Departments	-	-	4,250	-	4,250	Budget UMW A wage adjustment
101 1055	Various Departments	-	-	96,095	-	96,095	Budget UMW A wage adjustment
101 1055	GF Adjustment	167,361	32,933	610,165	-	409,871	
<b>Other Funds</b>							
213	Sp Library	-	-	-	-	-	Budget Library State Grants in Aid
214	Lodgers Tax	11,290	-	11,290	-	-	Budget Visitors Guide & bill board advertising
214	Lodgers Tax	-	-	38,635	-	38,635	Budget HK marketing for Chamber grant
216	Streets	497,084	-	40,000	-	40,000	Budget NM 118 and match
216	Streets	-	-	582,000	-	582,000	Budget UMW A wage adjustment
216	Streets	-	-	12,380	-	12,380	Transfer in and Budget Safety Incentive
216	Streets	-	6,566	6,567	-	1	Budget MOU 13Aug-1381 (County) / COG check for Vet Pillar project
218	Inter Governmental Grants	15,000	-	15,000	-	-	Adjust budget to compensate for the project roll (rounding)
218	Inter Governmental Grants	-	-	2	-	2	Transfer in from Risk Management to GF / cover safety incentive
219	Senior	-	1,644	-	-	(1,644)	Transfer OP budget FY16 ICIP items 10, 2 & 32 asset plan to GJU CP
307 6061	GJU CP Elec	-	120,000	120,000	-	-	Transfer OP budget FY16 ICIP items 10, 2 & 32 asset plan to GJU CP
307 6063	GJU CP Water	-	120,000	120,000	-	-	Transfer OP budget FY16 ICIP items 10, 2 & 32 asset plan to GJU CP
308	Airport	236,160	-	238,098	-	1,938	Budget FAA 24-2015, GUO15-02 & GUP16-01
390	11/00 Sales Tax Bond CP	1,000	-	-	-	(1,000)	Budget investment income
391	Legislative	20,000	-	20,000	-	-	Budget Legislative project #14-1955 Vet. Pillar
391	Legislative	1	-	2	-	1	Adjust budget due to rounding for roll of projects
391	Legislative	362,260	-	362,260	-	-	Budget Senior Legislative projects
391	Legislative	40,000	-	40,000	-	-	Budget 14-1954 Vet. Memorial @ Hillcrest
391	Legislative	78,600	-	78,600	-	-	Budget 14-1177 Senior & correct 13-1143
494	GJU Revenue Bonds	500	-	-	-	(500)	Budget investment income
495	GJU Revenue Bonds	4,000	-	-	-	(4,000)	Budget investment income
504 6064	GJU Solid Waste	-	-	10,807	-	10,807	Budget Customer Care phone & website system improvement
504 6064	GJU Solid Waste Enterprise	-	-	7,348	-	7,348	Budget UMW A wage adjustment
504 6064	GJU Solid Waste Enterprise	-	3,372	3,373	-	1	Transfer from Risk Management to cover safety incentive
506 6063	GJU Water Enterprise	-	-	15,939	-	15,939	Budget Customer Care phone & website system improvement
506 6063	GJU Water Enterprise	-	-	(120,000)	120,000	-	Transfer OP budget FY16 ICIP items 10, 2 & 32 asset plan to GJU CP
506 6063	GJU Water Enterprise	-	-	6,702	-	6,702	Budget UMW A wage adjustment
506 6063	GJU Water Enterprise	-	3,042	3,043	-	1	Transfer from Risk Management to cover safety incentive
506 6063	GJU Water Enterprise	-	-	-	3,753,432	3,753,432	Transfer cash from W to WW
507 6061	GJU Elec. Enterprise	-	-	50,000	-	50,000	Budget metering upgrade CC 6/23/15
507 6061	GJU Elec. Enterprise	-	-	49,094	-	49,094	Budget Customer Care phone & website system improvement
507 6061	GJU Elec. Enterprise	-	-	(120,000)	120,000	-	Transfer OP budget FY16 ICIP items 10, 2 & 32 asset plan to GJU CP
507 6061	GJU Elec. Enterprise	-	-	11,008	-	11,008	Budget UMW A wage adjustment
507 6061	GJU Elec. Enterprise	-	5,499	5,500	-	1	Transfer from Risk Management to cover safety incentive
508 6062	GJU WW Enterprise	-	-	7,740	-	7,740	Budget Customer Care phone & website system improvement
508 6062	GJU WW Enterprise	-	-	3,472	-	3,472	Budget UMW A wage adjustment

Fund	Dept.	Fund	Revenue	Transfer In	Expense	Transfer Out	Increase or (Decrease)	Purpose
508	6062	GJU WW Enterprise	-	1,069	1,070	-	1	Transfer from Risk Management to cover safety incentive
508	6062	GJU WW Enterprise	-	3,753,432	-	-	(3,753,432)	Transfer cash from W to WW
516		Fitness	-	-	1,077	-	1,077	Budget UMW A wage adjustment
516		Fitness	-	324	325	-	1	Transfer from Risk Management to cover safety incentive
590		Rodeo	167,000	-	167,000	-	-	Budget Best of Best staning budget / cc approved 9/8/15
590		Rodeo	(89,329)	-	(43,816)	-	45,513	Budget to actual and close prior rodeo budget
603		Risk Management	-	-	1,078	-	1,078	Budget UMW A wage adjustment
603		Risk Management	-	-	-	54,449	54,449	Project Roll
603		Risk Management	-	-	-	-	549	Budget Safety incentive
			-	-	-	-	-	
		Other Funds - Adjustment	1,343,566	4,014,948	1,746,143	4,047,881	\$ 435,510	
			*					
			1,510,927	4,047,881	2,356,308	4,047,881	845,381	



**MUNICIPALITY: GALLUP**

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

**Period Ending: 12/31/15**

**Prepared By: P HOLLAND**

**SUBMIT TO LOCAL GOVERNMENT DIVISION NO LATER THAN 30 DAYS  
AFTER THE CLOSE OF EACH QUARTER.**

*Patty Holland 01/22/16*

I HEREBY CERTIFY THAT THE CONTENTS IN THIS REPORT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT THIS REPORT DEPICTS ALL FUNDS

		YEAR-TO-DATE TRANSACTIONS										Signature		Date	
Fund #	FUND NAME	BEGINNING CASH BALANCE CURRENT FY (1)	REVENUES TO DATE (2)	TRANSFERS TO DATE (3)	EXPENDITURES TO DATE (4)	ADJUSTMENTS (5)	QTR ENDING CASH BALANCE (1)+(2)-(3)+(4)+(5) (6)	INVESTMENTS (7)	CASH + INVESTMENTS (8)	REQUIRED RESERVES (9)	AVAILABLE CASH (8) - (9)				
101	GENERAL FUND (GF)	\$2,791,298	12,816,230	(157,040)	11,858,860	(1,604,372)	\$1,987,256	5,041,048	\$7,028,304	988,238	\$6,040,065				
201	CORRECTION	\$137,676	66,740	0	37,010	150,000	\$317,406		\$317,406		\$317,406				
202	ENVIRONMENTAL GRT	\$4,055,166	715,960	0	1,578,724	787,160	\$3,979,562	9,426,624	\$13,406,186		\$13,406,186				
206	EMS	\$8,597	0	0	3,090	(3,437)	\$2,070		\$2,070		\$2,070				
207	ENHANCED 911	\$0	0	0	0		\$0		\$0		\$0				
209	FIRE PROTECTION FUND	\$65,290	516,310	(70,440)	390,765	106,711	\$227,106		\$227,106		\$227,106				
211	LEPF	\$35,530	67,200	0	3,826	1,381	\$100,285		\$100,285		\$100,285				
214	LODGERS' TAX	\$656,789	755,891	(164,510)	487,675	22,809	\$783,304	928,817	\$1,712,121		\$1,712,121				
216	MUNICIPAL STREET	\$354,430	934,011	806,566	1,103,124	159,458	\$1,151,341	928,817	\$2,080,158		\$2,080,158				
217	RECREATION	\$17,452	0	0	0		\$17,452		\$17,452		\$17,452				
218	INTERGOVERNMENTAL GRANTS	\$271,638	40,000	(30,110)	117,337	(163,253)	\$938		\$938		\$938				
219	SENIOR CITIZEN	\$32,813	163,884	208,921	324,847	(12,425)	\$68,346		\$68,346		\$68,346				
223	DWI PROGRAM	\$0	0	0	0		\$0		\$0		\$0				
299	OTHER	\$1,422,294	1,000,107	500,000	969,365	923,878	\$2,876,914	928,817	\$3,805,731		\$3,805,731				
300	CAPITAL PROJECT FUNDS	\$13,928,231	2,795,173	(800,000)	3,258,703	(6,096,769)	\$6,567,932	9,223,629	\$15,791,561		\$15,791,561				
401	G. O. BONDS	\$308,681	156,613	120,500	705,455	119,661	\$0		\$0		\$0				
402	REVENUE BONDS	\$4,424,850	3,542	2,127,309	610,876	673,312	\$6,618,137	6,645	\$6,624,781		\$6,624,781				
403	DEBT SERVICE OTHER	\$2,825,125	328	484,254	264,360	134,494	\$3,179,841	476,469	\$3,656,310		\$3,656,310				
500	ENTERPRISE FUNDS														
	Water Fund	\$0	0	0	0		\$0	0	\$0		\$0				
	Solid Waste	\$1,089,008	93,741	(84,379)	1,310,506	1,652,083	\$1,439,947	3,523,286	\$4,963,233		\$4,963,233				
	Waste Water	\$0	0	0	0		\$0		\$0		\$0				
	Airport	\$0	34,195	74,640	21,030	(5,112)	\$82,693		\$82,693		\$82,693				
	Ambulance	\$0	0	0	0		\$0		\$0		\$0				
	Cemetery	\$0	0	0	0		\$0		\$0		\$0				
	Housing	\$0	0	0	0		\$0		\$0		\$0				
	Parking	\$0	0	0	0		\$0		\$0		\$0				
	506-Joint Utilities	\$431,684	14,472,500	(2,961,592)	8,367,801	8,908,994	\$12,483,785	9,864,992	\$22,348,777		\$22,348,777				
	516-Fitness Center	\$363,994	136,299	324	100,944	177,612	\$577,285		\$577,285		\$577,285				
	590-Rodeo	\$645	71,695	0	42,822	(26,680)	\$2,838		\$2,838		\$2,838				
	592-Gametrco	\$196,468	233,096	0	200,997	(27,654)	\$200,913		\$200,913		\$200,913				
600	INTERNAL SERVICE FUNDS	\$994,228	1,084,175	(54,444)	980,749	(241,189)	\$802,021	2,786,451	\$3,588,472		\$3,588,472				
700	TRUST AND AGENCY FUNDS	\$801,467	0	0	0	6,958	\$808,425	0	\$808,425		\$808,425				
GRAND TOTAL		\$35,213,354	\$36,157,690	(\$1)	\$32,738,866	\$5,643,619	\$44,275,796	\$43,135,594	\$87,411,390	\$988,238	\$86,423,152				
FORM MODIFIED 12/09/08		LAST UPDATE 1/21/16 3:49 PM													



Mid Year Budget Proposal  
FY 2016

Fund	Dept.	Fund	Revenue	Transfer In	Expense	Transfer Out	Increase or (Decrease)	Purpose
<b>General Fund</b>								
101 0101	101.0101.414.42.50	GF City Councilors	-	-	8,341	-	8,341	Group Insurance Increase
101 0102	101.0102.414.42.50	GF City Manager	-	-	2,904	-	2,904	Group Insurance Increase
101 0102	101.0102.414.42.99	GF City Manager	-	-	104	-	104	Benefit Cost Increase
101 0102	101.0102.414.45.30	GF City Manager	-	-	16,500	-	16,500	Rodey, Dickason, Sloan - Lobbyist
101 0102	101.0102.414.45.30	GF City Manager	-	-	12,500	-	12,500	CM Move funding
101 0103	101.0103.412.41.50	GF Legal	-	-	500	-	500	Rodeo Overtime
101 0103	101.0103.412.42.50	GF Legal	-	-	1,453	-	1,453	Group Insurance Increase
101 0103	101.0103.412.43.10	GF Legal	-	-	500	-	500	Travel expense increase
101 0103	101.0103.412.45.30	GF Legal	-	-	75,000	-	75,000	Court Costs, Land purchase cost increases
101 0104	101.0104.411.42.50	GF Meters & Billing	-	-	1,646	-	1,646	Group Insurance Increase
101 0104	101.0104.411.42.90	GF Meters & Billing	-	-	1,800	-	1,800	Tuition cost
101 0104	101.0104.411.42.99	GF Meters & Billing	-	-	534	-	534	Benefit Cost Increase
101 0105	101.0105.411.42.50	GF Finance	-	-	5,050	-	5,050	Group Insurance Increase
101 0105	101.0105.411.45.30	GF Finance	-	-	76,100	-	76,100	Policy & Procedure audit finding work/5 year financial forecast
101 0105	101.0105.411.47.07	GF Finance	-	-	750	-	750	Increased grant filing expense
101 0107	101.0107.414.42.50	GF IT	-	-	(863)	-	(863)	Group Insurance Increase
101 0107	101.0107.414.42.99	GF IT	-	-	104	-	104	Benefit Cost Increase
101 0107	101.0107.414.44.90	GF IT	-	-	22,000	-	22,000	Increased Sunguard costs
101 0107	101.0107.414.47.15	GF IT	-	-	135,000	-	135,000	Increased Cell and telephone costs
101 0108	101.0108.414.42.50	GF Human Resources	-	-	767	-	767	Group Insurance Increase
101 0108	101.0108.414.43.10	GF Human Resources	-	-	4,000	-	4,000	Recruitment costs incurred
101 0108	101.0108.414.45.30	GF Human Resources	-	-	12,764	-	12,764	Performance Evaluation Training
101 0109	101.0109.411.41.60	GF Purchasing	-	-	1,908	-	1,908	Benefit Cost Increase
101 0109	101.0109.411.41.60	GF Purchasing	-	-	4,268	-	4,268	Group Insurance Increase
101 0109	101.0109.411.42.50	GF Purchasing	-	-	200	-	200	Rodeo Overtime
101 0120	101.0120.414.41.50	GF City Clerk	-	-	3,336	-	3,336	Group Insurance Increase
101 0120	101.0120.414.42.50	GF City Clerk	-	-	252	-	252	Benefit Cost Increase
101 0121	101.0121.411.41.60	GF Warehouse	-	-	180	-	180	Group Insurance Increase
101 0121	101.0121.411.42.50	GF Warehouse	-	-	396	-	396	Benefit Cost Increase
101 0122	101.0122.411.41.60	GF Customer Service	-	-	1,000	-	1,000	Benefit Cost Increase
101 0122	101.0122.411.42.10	GF Customer Service	-	-	5,410	-	5,410	Group Insurance Increase
101 0122	101.0122.411.42.90	GF Customer Service	-	-	1,500	-	1,500	Tuition cost
101 0122	101.0122.411.42.99	GF Customer Service	-	-	96	-	96	Benefit Cost Increase
101 0122	101.0122.411.44.51	GF Customer Service	-	-	3,200	-	3,200	Fuel cost not budgeted
101 0123	101.0123.432.42.50	GF Golf Course	-	-	(13,586)	-	(13,586)	Group Insurance Increase
101 0125	101.0125.411.47.05	GF Special Activities	-	-	5,000	-	5,000	Increased grant expense
101 0125	101.0125.411.47.09	GF Special Activities	-	-	10,000	-	10,000	Increased tax expense
101 0125	101.0125.411.47.16	GF Special Activities	-	-	7,500	-	7,500	Gallup Day
101 0104	101.0104.414.42.50	GF Facilities Mgt	-	-	(2,307)	-	(2,307)	Group Insurance Increase
101 0131	101.0131.474.42.50	GF Planning	-	-	13,919	-	13,919	Group Insurance Increase
101 0131	101.0131.474.42.99	GF Planning	-	-	780	-	780	Benefit Cost Increase
101 0132	101.0132.474.42.50	GF Engineering	-	-	5,821	-	5,821	Group Insurance Increase
101 0132	101.0132.474.42.99	GF Engineering	-	-	860	-	860	Benefit Cost Increase
101 0133	101.0133.413.42.50	GF Construction	-	-	7,880	-	7,880	Group Insurance Increase
101 0133	101.0133.413.44.10	GF Construction	-	-	1,500	-	1,500	Not centralized funding needed
101 0133	101.0133.413.46.40	GF Construction	-	-	1,200	-	1,200	Increased uniform cost

Fund	Dept.	Fund	Revenue	Transfer In	Expense	Transfer Out	Increase or (Decrease)	Purpose
101 1536	101 1536 414.41.60	GF Vehicle Service	-	-	413	-	413	Benefit Cost Increase
101 1536	101 1536 414.42.50	GF Vehicle Service	-	-	(2,877)	-	(2,877)	Group Insurance Increase
101 2011	101 2011 421.42.50	GF Police Administration	-	-	38,076	-	38,076	Group Insurance Increase
101 2011	101 2011 421.44.51	GF Police Administration	-	-	80,000	-	80,000	Lease vehicles not in budget
101 2012	101 2012 421.42.50	GF Police Animal Control	-	-	3,577	-	3,577	Group Insurance Increase
101 2013	101 2013 421.42.50	GF Police Building	-	-	2,302	-	2,302	Group Insurance Increase
101 2014	101 2014 421.42.50	GF Police Sworn	-	-	855	-	855	Group Insurance Increase
101 2541	101 2541 422.42.50	GF Fire	-	-	16,071	-	16,071	Group Insurance Increase
101 2541	101 2541 422.46.30	GF Fire	-	-	30,000	-	30,000	Budget use of EMT Revenue
101 3051	101 3051 432.42.50	GF Parks	-	-	2,991	-	2,991	Group Insurance Increase
101 3051	101 3051 432.42.99	GF Parks	-	-	2,181	-	2,181	Benefit Cost Increase
101 3544	101 3544 432.42.50	GF Recreation	-	-	(2,611)	-	(2,611)	Group Insurance Increase
101 3544	101 3544 432.45.90	GF Recreation	-	-	5,000	-	5,000	Budget GYBL expense
101 3547	101 3547 432.41.60	GF Harold Runnels	-	-	100	-	100	Benefit Cost Increase
101 3547	101 3547 432.42.30	GF Harold Runnels	-	-	5,600	-	5,600	Benefit Cost Increase
101 3547	101 3547 432.42.60	GF Harold Runnels	-	-	600	-	600	Benefit Cost Increase
101 3549	101 3549 432.42.50	GF Aquatic Center	-	-	(7,981)	-	(7,981)	Group Insurance Increase
101 3550	101 3550 432.41.60	GF RRP	-	-	10	-	10	Benefit Cost Increase
101 3550	101 3550 432.42.50	GF RRP	-	-	(3,541)	-	(3,541)	Group Insurance Increase
101 3550	101 3550 432.42.99	GF RRP	-	-	1,086	-	1,086	Benefit Cost Increase
101 4043	101 4043 432.42.30	GF El Morro	-	-	6,400	-	6,400	Benefit Cost Increase
101 4043	101 4043 432.42.50	GF El Morro	-	-	3,428	-	3,428	Group Insurance Increase
101 4043	101 4043 432.42.60	GF El Morro	-	-	3,500	-	3,500	Benefit Cost Increase
101 4043	101 4043 432.42.80	GF El Morro	-	-	700	-	700	Benefit Cost Increase
101 4553	101 4553 412.42.50	GF Courts	-	-	(5,093)	-	(5,093)	Group Insurance Increase
101 5055	101 5055 435.42.50	GF Library	-	-	7,206	-	7,206	Group Insurance Increase
			-	-	-	-	-	
			-	-	625,760	-	625,760	
		GF Adjustment	-	-	-	-	-	
<b>Other Funds</b>								
202 1525	202 1525 474.45.90	Environmental	-	-	100,000	-	100,000	Clean and Lien Cost Increase offset by 90K in revenue
214 1015	214 1015 411.47.29	Lodgers Tax	-	-	200,000	-	200,000	Increase promotional budget per state spending requirements
216 1534	216 1534 454.41.60	Streets	-	-	2,609	-	2,609	Benefit Cost Increase
216 1534	216 1534 454.42.50	Streets	-	-	3,182	-	3,182	Group Insurance Increase
216 1534	216 1534 454.42.99	Streets	-	-	2,750	-	2,750	Benefit Cost Increase
217 3544	217 3544 432.48.20	Recreation	-	-	17,452	-	17,452	Budget cash balance for equipment in recreation
483 6063	483 6063 444.49.20	NMFA Loans	-	-	1	-	1	Rounding difference in interest expense
497 1026	497 1026 470.49.10	Sales Tax Bond	-	-	25,200	-	25,200	Principal pmt budget
504 6064	504 6064 445.42.50	Solid Waste	-	-	(29,759)	-	(29,759)	Group Insurance Increase
505 6065	505 6065 446.47.97	NGWSP	-	-	100	-	100	Budget bad debt expense
506 6063	506 6063 444.42.50	Water	-	-	(21,052)	-	(21,052)	Group Insurance Increase
506 6063	506 6063 444.42.99	Water	-	-	2,700	-	2,700	Benefit Cost Increase
506 6063	506 6063 444.48.20	Water	-	-	15,100	-	15,100	Handheld meters budgeted previous year
507 6061	507 6061 442.42.50	Electric	-	-	(18,894)	-	(18,894)	Group Insurance Increase
507 6061	507 6061 442.48.20	Electric	-	-	18,525	-	18,525	Equip ordered prior year paid in current year
508 6062	508 6062 443.42.50	Waste Water	-	-	(8,711)	-	(8,711)	Group Insurance Increase
508 6062	508 6062 443.42.99	Waste Water	-	-	1,510	-	1,510	Benefit Cost Increase
516 3548	516 3548 432.42.50	Fitness Center	-	-	(2,424)	-	(2,424)	Group Insurance Increase
603 1016	603 1016 414.41.20	Risk Management	-	-	1,000	-	1,000	Wage increase for staff

Fund	Dept.	Fund	Revenue	Transfer In	Expense	Transfer Out	Increase or (Decrease)	Purpose
603 1016	603 1016.414.41.60	Risk Management	-	-	700	-	700	Benefit Cost Increase
603 1016	603 1016.414.42.10	Risk Management	-	-	57	-	57	Wage increase for staff
603 1016	603 1016.414.42.20	Risk Management	-	-	13	-	13	Wage increase for staff
603 1016	603 1016.414.42.30	Risk Management	-	-	164	-	164	Wage increase for staff
603 1016	603 1016.414.42.50	Risk Management	-	-	1,750	-	1,750	Group Insurance Increase
603 1016	603 1016.414.42.60	Risk Management	-	-	17	-	17	Wage increase for staff
603 1016	603 1016.414.42.99	Risk Management	-	-	492	-	492	Benefit Cost Increase
			-	-	-	-	-	
		<i>Other Funds - Adjustment</i>	-	-	312,482	-	\$ 312,482	
			-	-	938,242	-	938,242	

**CITY OF GALLUP  
RESOLUTION NO. R2016-9**

**A RESOLUTION AMENDING THE FISCAL YEAR 2016 BUDGET FOR CERTAIN FUNDS, APPROVING THE YEAR TO DATE REPORT OF ACTUALS AND APPLICATION TO THE LOCAL GOVERNMENT DIVISION OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION FOR THE APPROVAL THEREOF:**

**WHEREAS**, the Governing Body in and for the City of Gallup, State of New Mexico has amended the budget for Fiscal Year 2016 (July 1, 2015 through June 30, 2016); and

**WHEREAS**, said budget amendment was developed on the basis of need and through cooperation with all user departments, elected officials and other department supervisors; and

**WHEREAS**, to perform essential and necessary services for the citizens of the City of Gallup, certain transfers of funds for personnel, operations and capital outlay expenditures are necessary; and

**WHEREAS**, the DFA YTD report of actual activity has been prepared showing summary data by fund; and

**WHEREAS**, the official meeting for the review of said documents were duly advertised on January 22, 2016, in compliance with the State Open Meetings act; and

**WHEREAS**, it is the majority opinion of this Council that the proposed budget adjustment meets the requirements as currently determined for the close of the second quarter of 2016.

**NOW THEREFORE, BE IT HEREBY RESOLVED** that the Governing Body of the City of Gallup, State of New Mexico hereby adopts the budget amendment herein above described and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

**RESOLVED:** In session this 26th day of January, 2016.

**CITY OF GALLUP, NEW MEXICO**

**ATTEST:**

\_\_\_\_\_  
Al Abeita, City Clerk

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Jackie McKinney, Mayor

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Linda Garcia, City Councilor

\_\_\_\_\_  
Allan Landavazo, City Councilor

\_\_\_\_\_  
Yogash Kumar, City Councilor

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Fran Palochak, City Councilor